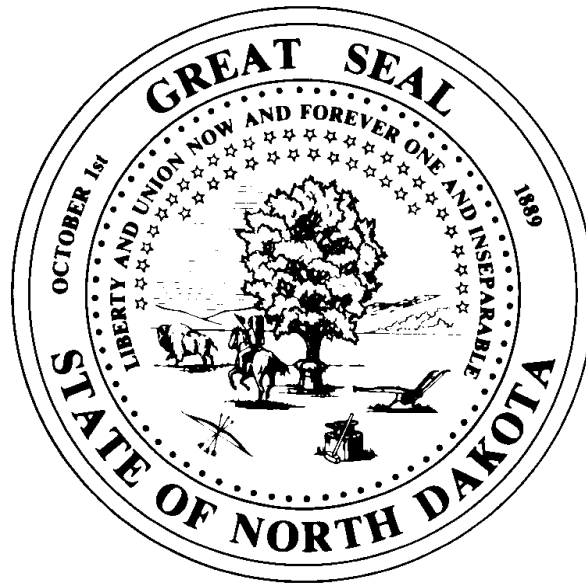


HOW TO BEGIN AND MAINTAIN A NONPROFIT CORPORATION IN THE STATE OF NORTH DAKOTA

October 2017



SECRETARY OF STATE

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Website: sos.nd.gov

* * * * *

Contributing Agencies

North Dakota Attorney General
Job Service North Dakota
North Dakota Department of Labor and Human Rights
North Dakota Office of State Tax Commissioner
North Dakota Insurance Department

(If you need this information in an alternate format, please
contact the Secretary of State's office)



SECRETARY OF STATE

Greetings,

This manual will guide interested persons and organizations through the process of becoming chartered as a nonprofit corporation in the State of North Dakota. If the nonprofit corporation is already chartered, it will assist in maintaining the nonprofit corporate organizational structure as required by state law. Although this manual is a guide and resource, it should not be used as a replacement for counsel provided by legal, accounting, and management professionals.

The nonprofit community of North Dakota and the nation is significant and contributes extensively to the economy while enhancing the overall quality of life. It serves millions of people throughout the country and many thousands in North Dakota by providing services in the areas of arts, humanities, education, religion, health, research, human services, youth, senior citizens, recreation, environment, public affairs, community development, and many others too numerous to mention. Without a doubt, the nonprofit community touches the lives of everyone.

There are many compelling reasons for an organization or group of people to become chartered as a nonprofit corporation. These reasons include, but are not limited to the following:

- It provides an organizational structure that allows a group of people, with similar interests, to carry out a stated mission and conduct their business affairs in support of that mission in a prudent and responsible manner;
- It provides a means by which an organization can own assets and hold title to real property;
- It provides an organizational structure under the provisions of state law, which provides guidance regarding the rights, obligations and responsibilities of members, officers, and directors;
- It provides an organizational structure that allows the organization to meet the tax guidelines of the federal and state government;
- It provides liability protection for the organization's members, officers, directors, and volunteers;
- It provides for continuity, accountability of assets, and the continued existence of the organization and its mission even as members and officers change;
- It provides a structure that allows for the acceptance of contributions (if needed in carrying out the organization's mission) and the receiving of grants from potential benefactors.

This publication was made possible by the agencies listed on the front cover of this manual along with the personnel in the Secretary of State's office. They worked many hours to make this manual a valuable, useful, and comprehensive resource. Please do not hesitate to contact them or this office if you have any questions about its contents.

Sincerely,

A handwritten signature in black ink, appearing to read "Al Jaeger".

Al Jaeger
Secretary of State

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Nonprofit Corporation

North Dakota Century Code Chapter 10-33 allows for the formation of a nonprofit corporation. A copy of the law is available under the Nonprofit Services section on the secretary of state's website at sos.nd.gov.

A nonprofit corporation is a legal entity that may be established by one or more individuals. The secretary of state grants a charter upon filing of articles of incorporation legally recognizing the corporation as a separate legal entity having its own rights, privileges, and liabilities distinct from those of its members.

Organizations may have several reasons to incorporate. Some of the most common are limitation of liabilities, tax liabilities, formalized governance, and continuity of life.

This section includes information about the nonprofit corporation structure and instructions for drafting articles of incorporation. It is intended as an informational resource. It is not intended as a substitute for legal or financial counseling. Individuals are encouraged to consult with an attorney and/or accountant before establishing a nonprofit corporation.

North Dakota Century Code Chapter 10-36 also allows for the formation of a nonprofit limited liability company.

Contact information for the secretary of state's office is listed on the title page of this guide.

Tax Exemption

The secretary of state issues the corporate charter that establishes a nonprofit corporation. The corporate charter does not grant tax exemption. The Internal Revenue Service grants tax exemption. Since specific language is required in the articles of incorporation to qualify for tax-exempt status, it is advisable to research the Internal Revenue Service requirements before drafting the articles of incorporation. For information regarding tax exemption, contact the nearest Internal Revenue Service office or consult the Internal Revenue Service's website at www.irs.gov and refer to Publication 557, *Tax Exempt Status for Your Organization*.

Incorporators (N.D.C.C. § 10-33-05)

One or more individuals may organize a nonprofit corporation. According to North Dakota law, the individuals must be at least eighteen years of age and do not need to be North Dakota residents to act as incorporators.

Names and addresses of incorporators must be included in the articles of incorporation. The articles of incorporation must be signed by all incorporators.

Existence (N.D.C.C. § 10-33-09)

The existence of a nonprofit corporation begins at the time a certificate of incorporation is issued by the secretary of state or within ninety days after the certificate is issued if a later effective date is provided in the articles of incorporation. The certificate of incorporation is issued upon filing of the articles of incorporation that meet all the requirements of law.

The existence of a nonprofit corporation is perpetual unless limited to a period defined in the articles of incorporation. Perpetual existence, which is an indefinite period, is the appropriate reference if the corporation is being incorporated to exist until dissolved. If not organized for perpetual existence, the articles must include the specific number of years the nonprofit corporation is to exist, or the specific date (month, day, and year) on which the nonprofit corporation shall cease to exist.

Name (N.D.C.C. § 10-33-10)

The name of a North Dakota nonprofit corporation must be in letters or characters used in the English language as those letters or characters appear in the American Standard Code for Information Interchange (ASCII) table. The corporate name need not include the word “company,” “corporation,” “incorporated,” “limited,” or an abbreviation of one of these.

The name of a North Dakota nonprofit corporation may not include such words as “bank,” “banker,” “banking,” “trust,” or “trust company,” or any other word or words of like import unless the articles of incorporation are supported by a written approval for the use from the North Dakota Department of Financial Institutions. North Dakota law has reserved these words for the exclusive use of the Bank of North Dakota, national and state banking corporations, and trust companies. To obtain written approval for use of one of these words, contact:

ND Department of Financial Institutions
2000 Schafer Street Suite G
Bismarck ND 58501-1204
Phone: (701) 328-9933
Email: dfi@nd.gov

If a name proposed for the nonprofit corporation is the same as, or deceptively similar to, a name already reserved or registered with the secretary of state, the articles of incorporation will be rejected. The corporation may use the name if the articles of incorporation are accompanied by:

- a) A signed Consent to Use Business Name from the holder of the previously registered name and \$10; or
- b) A certified copy of a judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.

The Consent to Use Business Name form, developed by the secretary of state, is available on the secretary of state’s website at sos.nd.gov or may be obtained by contacting the secretary of state.

To determine availability of the chosen corporate name, a preliminary name search may be conducted from the secretary of state’s business record search online at sos.nd.gov. To guarantee the right to the name, a Reserve Name Application may be filed with the Secretary of State. The Reserve Name Application is available on the Secretary of State’s website at sos.nd.gov or may be obtained by contacting the secretary of state. Investment or commitments in the name should not be made until a name reservation or articles of incorporation are filed and acknowledged by the secretary of state.

Filing of the articles of incorporation with the secretary of state provides protection of the corporate name in North Dakota. However, if a mark is registered with the Patent and Trademark Office in Washington, D.C., the federal registration may supersede the protection afforded by state law. Since the secretary of state is not required to check the federal trademark index when deciding availability of a corporate name, the incorporators must perform due diligence to make sure that the name that is chosen does not in any way infringe on any federally protected name.

Purpose (N.D.C.C. § 10-33-04)

A nonprofit corporation may incorporate for any lawful nonprofit activity. Generally, nonprofit corporation articles include specific purposes. However, the secretary of state will accept articles of incorporation with “any lawful nonprofit purpose” unless the name or any other aspect of the articles indicates a purpose that may be questionable.

A nonprofit corporation may not pay dividends, provide pecuniary remuneration or result in pecuniary gain to its members, other than to the following members:

- a) Nonprofit organizations; or
- b) Subdivisions, units, or agencies of the United States, state government, or local government.

Registered Agent and Office (N.D.C.C. § 10-33-12)

A nonprofit corporation must continuously maintain a commercial or noncommercial registered agent and address in North Dakota. The agent is the official contact person for the corporation for service of any process, notice, or demand.

A commercial registered agent is registered as such with the secretary of state, with a list of those so registered available on the secretary of state's website at sos.nd.gov.

A noncommercial registered agent may be:

- a) An individual residing in North Dakota (an officer or a member could be the noncommercial registered agent if residing in North Dakota);
- b) Another domestic corporation (the corporation submitting the articles of incorporation cannot serve itself as the agent);
- c) A domestic limited liability company;
- d) A foreign corporation; or
- e) A foreign limited liability company.

A corporation or limited liability company appointed as a noncommercial registered agent must be authorized to transact business in North Dakota, have a business office in North Dakota, and be in good standing with the secretary of state. If a corporation or limited liability company is being named as a noncommercial registered agent, the "correct" name of the corporation or limited liability company must be provided.

If a commercial registered agent is named, the articles of incorporation need not provide an address of the commercial registered agent. If a noncommercial registered agent is named, the articles of incorporation must include the complete address in North Dakota of that appointed noncommercial registered agent. The address of the noncommercial registered agent **must** include an actual location, including a street or rural address, a post office box number if applicable for mailing purposes, and the city, state, and zip code. This address may not be only a post office box.

If the corporation does not have an individual in its organization or a corporate or limited liability company affiliate that agrees to serve as the registered agent, a list of individuals and companies that specialize in the service as noncommercial registered agents is also available on the secretary of state's website at sos.nd.gov.

A corporation should seek the approval of the party before naming the party as the commercial or noncommercial registered agent. Failure to seek consent from the party named as agent may result in involuntary dissolution of the corporation. Proof of the approval is not required to be filed with the secretary of state.

Change of Registered Agent or Office (N.D.C.C. §§ 10-33-13, 10-01.1-08, and 10-01.1-09)

A nonprofit corporation may change its commercial or noncommercial registered agent or the address of the noncommercial registered agent by filing a statement of change with the secretary of state. This change can be made on the annual report or done with the separate filing of a Commercial or Noncommercial Registered Agent/Office Statement of Change. If the agent or address of the

noncommercial registered agent is changed on the annual report, a separate fee for this change is not incurred. If a separate filing is made of the Commercial or Noncommercial Registered Agent/Office Statement of Change, a fee of \$10 is required for the Statement of Change. If the corporation chooses to file the Commercial or Noncommercial Registered Agent/Office Statement of Change, the form is available on the secretary of state's website at sos.nd.gov or may be obtained by contacting the secretary of state's office.

Since the name of the commercial registered agent and the name and address of the noncommercial registered agent are included in the articles of incorporation, a change of the agent or address is considered to be an amendment to the articles of incorporation. The change of the party named as a commercial or noncommercial registered agent requires a resolution of the board of directors. The change of a registered agent's address does not require an action of the board and can actually be filed by the registered agent without board authority to do so.

A nonprofit corporation that fails to continuously maintain a commercial or noncommercial registered agent may be subject to involuntary dissolution.

Resignation of Commercial or Noncommercial Registered Agent (N.D.C.C. § 10-01.1-11)

A commercial or noncommercial registered agent may resign from that appointment any time during the active life cycle of a nonprofit corporation. The Commercial or Noncommercial Registered Agent Resignation form, developed by the secretary of state, is available on the secretary of state's website at sos.nd.gov or may be obtained by contacting the secretary of state's office.

The secretary of state does not charge a fee to file the resignation statement of a commercial or noncommercial registered agent.

The resignation statement takes effect on the thirty-first day after it is filed with the secretary of state or on the date when a new appointment of commercial or noncommercial registered agent is filed by the nonprofit corporation.

Articles of Incorporation (N.D.C.C. § 10-33-06)

The articles of incorporation of a nonprofit corporation have a long-term retention period in the office of the secretary of state. For that reason, it is preferred that the articles are prepared on white paper and that they are typed or legibly written in black ink. Illegible documents must be rejected.

A form is being provided at the end of this section for the drafting of articles of incorporation. A corporation may use the form, or it may use the form as a guide to draft articles of incorporation as a free-form document. If the form is not used, the text and the order of any or all of the articles may be altered as long as the articles contain the minimum information required by statute. The provided form contains the minimum information required in the articles of incorporation.

Articles of incorporation are subject to public inspection. Accessibility for public inspection may justify exclusion from the articles any details regarding the internal government of the corporation. Most of these matters may be left to the bylaws. However, additional provisions may be included in the articles as provided in North Dakota Century Code Chapter 10-33.

The sentence above Article I identifies the North Dakota Century Code (N.D.C.C. Chapter 10-33) that will govern the corporation. In addition, the articles of incorporation must contain the following articles:

- a) The name of the corporation;
- b) The complete address of the principal executive office, or if the corporation does not maintain an office, the address of an officer should be provided instead. This address MUST include a street address and may not be only a post office box;
- c) The name of the commercial registered agent or the name and the complete address of the noncommercial registered agent;
- d) A designation whether the corporation is to be effective when filed with the secretary of state or a later specified date within ninety days after the submission to the secretary of state;
- e) The purpose of the corporation;
- f) The names and addresses of the incorporators; and
- g) Any other provisions elected for inclusion. This article often includes the language specified for inclusion by the Internal Revenue Service to qualify for tax-exempt status. If the corporation chooses to determine a specific date on which it is to cease to exist, that date might be included in this article.

The articles submitted to the secretary of state must be dated and signed by all incorporators named in the articles of incorporation. Only one signed document must be submitted to the secretary of state.

The usual fee due and payable to the secretary of state at the time of incorporation is \$40. Additional fees are due if the corporation assumes a corporate name that is deceptively similar to a name already in some manner registered with the secretary of state and Consent to Use Business Name is provided. A fee of \$10 is required for each signed Consent to Use Business Name. Checks must be payable to "Secretary of State" and must be for U.S. negotiable funds. Payment may also be made by credit card using Visa, MasterCard, Discover, or American Express.

Articles of Amendment (N.D.C.C. §§ 10-33-14 thru 10-33-20)

A corporation may amend its articles of incorporation at any time. Amendments may be made to modify provisions in the articles, to add provisions to the articles, or to exclude provisions from the articles. While exclusions of articles may be made, the incorporators that appeared on the original articles of incorporation cannot be removed or changed. Incorporators are required on the original articles of incorporation and must remain as such. If the name of an incorporator is misspelled on the original articles, articles of correction may be filed to correct the error.

The secretary of state prescribes the Nonprofit Corporation Articles of Amendment form. The form is available on the secretary of state's website at sos.nd.gov or may be obtained by contacting the secretary of state's office.

If a nonprofit corporation needs to amend the address of the principal executive office, it may file an [Address Change of Principal Executive Office \(SFN 60867\)](#) with the secretary of state without a fee. That form is available from the secretary of state's website at sos.nd.gov or may be obtained by contacting the secretary of state. If only a change to the principal executive office is required, the change may instead be reported on the next annual report.

Bylaws (N.D.C.C. § 10-33-26)

Bylaws are the code adopted by the corporation which defines the rules for the management of the internal affairs of the corporation. A corporation may, but need not, have bylaws. Some nonprofit corporations refer to these rules as their constitution rather than bylaws. The bylaws must be consistent with the provisions in the articles of incorporation and the laws of North Dakota.

Bylaws may include provisions regarding the following:

- a) Directors, including the number of directors, manner of election, qualifications, powers, duties, compensation (if any), terms and vacancies;
- b) Members, including qualifications, classifications, voting rights, privileges, admission, withdrawal, suspension, and expulsion;
- c) Committees, including appointment and authority;
- d) Officers, including election, duties, compensation, terms, and vacancies;
- e) Meetings, including time, place, manner of calling, conducting, giving notices of meetings, member meetings, board meetings, and committee meetings;
- f) Voting, including mail ballots, number establishing a quorum for meetings of members and the board of directors; and
- g) Procedures to amend or repeal bylaws.

Nonprofit corporations are not required to file their bylaws with the secretary of state. Any bylaws filed with the secretary of state are subject to public inspection. If a corporation chooses to file its bylaws, it is advisable to file any subsequent amendments to those bylaws so that the recorded version is complete if anyone from the public should review the record at the secretary of state's office. The filing fee is \$10 if a corporation chooses to file its bylaws.

Members

(N.D.C.C. § 10-33-57)

A nonprofit corporation may have one or more classes of members, or it may be established without members. The articles of incorporation or the bylaws may establish the provisions relative to members, including qualifications, classifications, voting rights, privileges, admission, withdrawal, suspension, and expulsion.

Officers

(N.D.C.C. § 10-33-49)

Officers of a nonprofit corporation must be individuals who are at least eighteen years of age. A corporation must maintain a president (chief executive officer) and a secretary. The corporation may also maintain a treasurer, one or more vice presidents, and any other officers as may be provided for in the bylaws. The articles of incorporation or the bylaws may establish the provisions relative to officers including election, duties, compensation, terms, and vacancies.

Directors

(N.D.C.C. §§ 10-33-27 thru 10-33-47)

A nonprofit corporation must maintain a board of directors to manage its business and affairs. The board must consist of at least three or more directors. However, if the corporation has only one or two members with voting rights, then the number of directors may be less than three, but not less than the number of members with voting rights. The articles of incorporation or the bylaws may establish the provisions relative to directors, including election, duties, compensation (if any), terms, and vacancies.

Annual Report

(N.D.C.C. § 10-33-139)

A nonprofit corporation must file an annual report with the secretary of state before February 1st each year with its first report being due in the year following that in which its certificate of incorporation was issued. The annual report form is prescribed by the secretary of state and is mailed to the registered agent several weeks before the date on which the report is due. This annual report is different from the report required of a nonprofit corporation that has a charitable registration to solicit. A corporation with a charitable registration to solicit actually files two different reports each year with the secretary of state.

The annual report of a nonprofit corporation requires very basic information, including:

- a) Corporate name;
- b) Name of the commercial registered agent or name and address of the noncommercial registered agent;
- c) Principal executive office address of the corporation;
- d) Brief statement describing the purpose of the corporation;
- e) Federal tax code by which tax exemption is recognized; and
- f) The names and addresses of the officers and directors.

There are many good reasons to file an annual report with the secretary of state:

1. The annual report verifies the continued existence of a nonprofit corporation and affirms to the corporation that it is a legal entity having specific legal responsibilities to its members and the public.
2. Since the annual report process provides a means for dissolution of a nonexistent corporation, it allows the state to maintain a database comprised of only existing and active nonprofit corporations.
3. The annual report causes a nonprofit corporation to annually review its responsibilities as a legal entity. As a result, it is easier for a nonprofit corporation to follow the law that requires it to have a commercial or noncommercial registered agent and report changes thereof as those changes occur. Given the frequent turnover of nonprofit corporation boards, the annual review serves to educate new board members of their legal responsibilities.
4. An ongoing relationship with the state makes it easier for the state to assist nonprofit corporations with the corporate concerns of their organization.
5. The information on the annual report provides the public with access to the names of officers, directors, and board members of a nonprofit corporation.
6. A current database of nonprofit corporations has enabled the state to provide current lists of qualifying corporations to potential benefactors wanting to make donations or grants to them. The current database has also enhanced the potential for increased communication between the state's nonprofit corporations having similar interests.
7. The dissolution of abandoned corporations has freed up many corporate names for use by others.

Fees

(N.D.C.C. § 10-33-140)

All fees paid to the secretary of state for filing nonprofit corporation documents are deposited in the state's general fund. The following is a list of fees due and payable to the secretary of state for specific corporate filings:

Articles of incorporation	\$40
Articles of amendment	\$20
Statement of correction	\$20
Restated articles	\$30
Articles of merger or consolidation	\$50
Intent to dissolve	\$10
Articles of dissolution	\$20
Statement of change of commercial or noncommercial registered agent or office. (This fee is not required if the change is made on the annual report.)	\$10
Resignation as registered agent	No charge
Application to reserve a corporate name	\$10
Notice transferring a reserved corporate name	\$10
Cancellation of a reserved corporate name	\$10
Consent to use of deceptively similar name	\$10
Annual report, if timely filed	\$10
Any other statement (i.e. bylaws)	\$10

Trade Name (N.D.C.C., Chapter 47-25)

North Dakota law allows a nonprofit corporation to use and operate under a name that is different from its corporate name. The use of an acronym instead of its corporate name is considered different from its corporate name. Any different name is then considered a trade name and must be registered with the secretary of state before it is used. Information and forms to file a trade name are available from the Business Services section of the secretary of state's website at sos.nd.gov or may be obtained by contacting the secretary of state's office.

Trademark and Service Mark (N.D.C.C., Chapter 47-22)

A trademark or service mark is a word, symbol, device, or any combination thereof adopted and used by a person or organization to distinguish goods or services made or sold from those made or sold by another. Many nonprofit corporations have developed and registered trademarks or service marks with the secretary of state.

While trademark and service mark registration is not required in North Dakota, a mark may be registered with the secretary of state to establish exclusive right to the mark in North Dakota. Any owner of a trademark or service mark registered with the secretary of state may proceed by suit to enjoin the manufacture, use, display, or sale of any counterfeits or imitation thereof. Any court of competent jurisdiction may grant injunctions to restrain such manufacture, use, display, or sale as deemed just and reasonable, and may require the defendants to pay to the mark owner all profits derived or all damages suffered by reason of the wrongful manufacture, use, display, or sale.

Information and forms to file a trademark or service mark are available on the secretary of state's website at sos.nd.gov (Business Services section) or may be obtained by contacting the secretary of state's office.

Federal Trademark Registration

A trademark may be registered federally. Contact the Commissioner of Patents & Trademarks for information and forms.

Director of the U.S. Patent & Trademark Office
PO Box 1450
Alexandria VA 22313-1450

General trademark or patent information: (800) 786-9199
Trademark and patent searches: (571) 272-3275

Website: www.uspto.gov

Copyright Registration

New written works, published and unpublished, can be protected by registration of a copyright. Written works includes literary, dramatic, musical, artistic, and certain other intellectual works. A copyright gives the owner of the copyright the exclusive right to reproduce the copyrighted material. Copyrights are not registered with any branch of North Dakota government. The United States Library of Congress registers copyrights. Contact the Library of Congress for information and forms to register a copyright.

United States Copyright Office
101 Independence Ave SE
Washington DC 20559-6000

Copyright public information: (202) 707-5959
Forms & Publications Hotline: (202) 707-9100

Website: www.copyright.gov

Employer Identification Number (EIN)

The Internal Revenue Service issues employer identification numbers. A nonprofit corporation with employees is required to withhold and report employment taxes. For information regarding an employer identification number, contact the Internal Revenue Service office nearest you, or consult the Internal Revenue Service's website at www.irs.gov.

Assistance

If assistance is required to complete articles of incorporation, or any other corporate filings, contact the secretary of state's office at sosbir@nd.gov or (701) 328-2904.

Forms

Most of the forms for corporate filings are available on the secretary of state's website at sos.nd.gov or may be obtained by contacting the secretary of state's office.

Filing and Mailing Instructions

Email Filing: Email is not a secure utility and is not recommended as a safe means to convey your corporate documents and credit card information to the secretary of state. Conventional mail, fax, and personal delivery are safer alternatives.

Fax Filing: Documents and Credit Card Payment Authorizations may be faxed to the secretary of state. Fax corporate documents to (701) 328-2992 except for annual reports and Commercial or Noncommercial Registered Agent Statement of Change, which may be faxed to (701) 328-0106. A faxed filing does not expedite the process of the documents in the secretary of state's office.

Mailing Instructions: Send signed documents and payment to:

Secretary of State
State of North Dakota
600 E Boulevard Avenue Dept 108
Bismarck ND 58505-0500

Contact Information

Telephone: (701) 328-4284
Toll-free: (800) 352-0867 (option 2)
TTY: (800) 366-6888
Fax Numbers:
 (701) 328-2992 (Formation, Amendment, Merger Documents)
 (701) 328-0106 (Annual Reports and Commercial or Noncommercial Registered Agent
 Statement of Change)
Website: sos.nd.gov
Email: sosbir@nd.gov

Appendix A

North Dakota Nonprofit Corporation Articles of Incorporation (SFN 13003)



NORTH DAKOTA NONPROFIT CORPORATION
ARTICLES OF INCORPORATION
SECRETARY OF STATE
SFN 13003 (08-2015)

FOR OFFICE USE ONLY

ID Number	
Work Order Number	
Filed	By

FILING FEE: \$40.00

TYPE OR PRINT LEGIBLY

SEE INSTRUCTIONS FOR FEES, FILING AND MAILING INFORMATION.

We, the undersigned natural persons of the age of eighteen years or more, acting as incorporators of a corporation organized under North Dakota Century Code Chapter 10-33, adopt the following Articles of Incorporation.

Article 1. Name of Corporation					
Article 1A. Address of Principal Executive Office (Street/RR, City, State, ZIP+4). Street address <u>MUST</u> be provided; may not be only a post office box.					
Article 2A. Name of <u>commercial</u> registered agent in <u>North Dakota</u>			Article 2B. Name of <u>noncommercial</u> registered agent in <u>North Dakota</u>		
OR					
Article 2C. Address of <u>noncommercial</u> registered agent in <u>North Dakota</u> (Street/RR, PO Box, City, State, ZIP+4) Street address <u>MUST</u> be provided; may not be only a post office box.					
Article 3. The corporation shall be effective: (check one) <input type="checkbox"/> When Filed with the Secretary of State <input type="checkbox"/> Later on (month, day, year): _____ (Must be within 90 days after filing with Secretary of State)					
Article 4. Purpose for which corporation is organized					
Article 5. Other provisions elected for inclusion					
Article 6. Name and address of each incorporator (must provide at least one)					
NAME		Street/Rural Route	Post Office Box	City	State ZIP+4
"The above named incorporators have read the foregoing Articles of Incorporation, know the contents, and believe the statements made therein to be true. I (We) further authorize the Secretary of State to correct Articles 2A, 2B, or 2C if not correctly reflected. I (We) understand that if I (we) make a false statement in this document, I (we) may be subject to criminal penalties."					
Signature				Date	
Signature				Date	
Signature				Date	
Signature				Date	
Name of Person to Contact About This Document		E-mail Address		Daytime Telephone Number	

NORTH DAKOTA NONPROFIT CORPORATION ARTICLES OF INCORPORATION

North Dakota Century Code Chapter 10-33 allows the formation of a nonprofit corporation. The nonprofit corporation is established when articles of incorporation are filed with the Secretary of State.

FILING FEES: \$40.00. If the corporation selects a corporate name that is the same as, or deceptively similar to, the name of another organization registered with the Secretary of State, an additional \$10 is required for filing each Consent to Use Business Name that may be required. (Checks must be payable to "Secretary of State" and must be for U.S. negotiable funds. Payment may also be made by credit card using VISA, MasterCard, or Discover.)

The sentence immediately above Article 1 is declaring the incorporators as being eighteen years of age, and the corporation's governance under North Dakota Century Code, Chapter 10-33, the Nonprofit Corporation Act.

The following article numbers correspond to the numbered sections on the form.

ARTICLE 1. Provide the corporate name. The name must be expressed in characters or letters in the English language as those characters or letters appear in the American Standard Code of Information Interchange (ASCII) table. The name need not include the word "company", "corporation", "incorporated", "limited", or an abbreviation of one of these.

The name may not be the same as, or deceptively similar to, any other corporate name, limited liability company name, trade name, fictitious name, limited partnership name, limited liability limited partnership name, limited liability partnership name, trademark or service mark, or a name that is in any manner reserved with the Secretary of State. If the proposed name is not available, the Articles of Incorporation cannot be filed by the Secretary of State unless accompanied by the Consent to Use Business Name.

The name may not include such words as "bank", "banker", "banking", "trust", or "trust company", or any other word or words of like import unless the Articles of Incorporation are supported by a written approval for the use from the Department of Financial Institutions. These words are preserved by North Dakota law for use by the Bank of North Dakota, state and national banks, and trust companies. Contact information:

ND Department of Financial Institutions
2000 Schafer St Ste G
Bismarck, ND 58501-1204
Phone: (701) 328-9933
Email: dfi@nd.gov

Filing of the Articles of Incorporation with the Secretary of State provides protection of the corporate name in North Dakota. However, if a mark is registered with the Patent and Trademark Office in Washington, D.C., the federal registration may supersede the protection afforded by state law.

ARTICLE 1A. Provide the complete address of the principal executive office. The address must include a street address; it cannot be only a post office box. If a corporation does not maintain an office, provide the address of one of the officers.

ARTICLE 2. A corporation must continuously maintain a commercial or noncommercial registered agent and address in North Dakota. A corporation cannot serve itself as its registered agent. The registered agent receives all legal notices for the corporation, including service of process if a lawsuit is filed against a corporation. The registered agent is expected to forward all notices to the corporation.

A commercial registered agent must be registered as a commercial registered agent with the North Dakota Secretary of State. The appointed agent can verify their status as a commercial registered agent from their acknowledged filing and from the list of commercial registered agents maintained on the Secretary of State's website at sos.nd.gov.

A noncommercial registered agent may be one of the following:

- a) An individual residing in North Dakota,
- b) A domestic or foreign corporation, or
- c) A domestic or foreign limited liability company

A corporation or limited liability company appointed as a noncommercial registered agent must be registered with the Secretary of State, be in good standing, and have a business address in North Dakota. If a corporation or limited liability company is named as a noncommercial registered agent, provide the "correct" name of the organization.

Seek the approval of the party before naming them as the commercial or noncommercial registered agent. Proof of the approval is not required to be filed with the Secretary of State. Failure to seek consent from the party named as agent may result in involuntary dissolution of the corporation.

ARTICLE 2A. If a commercial registered agent is being appointed, provide the correct name as registered with the North Dakota Secretary of State. If the name in Article 2A is not the same as registered by the commercial registered agent, the name will be corrected by the Secretary of State when the document is reviewed.

OR

ARTICLE 2B. If a noncommercial registered agent is being appointed, provide the correct name. If another corporation or limited liability company is appointed as registered agent and the name of that organization in Article 2B is not the same as registered, the name will be corrected by the Secretary of State when the document is reviewed.

ARTICLE 2C. If a noncommercial registered agent is being appointed, provide the complete address which may not be only a post office box. **Leave this line blank if a commercial registered agent is appointed.** If a commercial registered agent is named in 2A and an address is provided in 2C, the address will be removed by the Secretary of State.

ARTICLE 3. Check the box for the desired effective date. Articles of incorporation may be effective at the time the certificate of incorporation is issued by the Secretary of State or within 90 days after the certificate is issued. If a later date is specified, include the month, day, and year. If neither box is checked, the articles of incorporation will be effective when the Secretary of State issues the certificate of incorporation.

NORTH DAKOTA NONPROFIT CORPORATION ARTICLES OF INCORPORATION (continued)

ARTICLE 4. Provide the purpose of the corporation. A nonprofit corporation may incorporate for any lawful nonprofit activity. Generally, nonprofit corporation articles include specific purposes. However, the Secretary of State will accept articles of incorporation with "any lawful nonprofit purpose" unless the name or any other aspect of the articles indicates a purpose that may not be appropriate for a nonprofit corporation.

A nonprofit corporation may not pay dividends, pecuniary remuneration or result in pecuniary gain to its members, other than to the members who are either nonprofit organizations, subdivisions, units or agencies of the United States, state government, or local government.

ARTICLE 5. Provide any articles not otherwise included on this form. This article often includes the language specified for inclusion by the Internal Revenue Service to qualify for tax-exempt status. If the corporation chooses to determine a specific date on which it is to cease to exist, that provision might be included in this article.

ARTICLE 6. Provide the names and complete mailing addresses of the incorporators. If there are more than three incorporators, attach a list of additional incorporators including their addresses and signatures. Only one incorporator is required, and more may be named. Incorporators must be individuals and must be at least eighteen years of age. All incorporators named must sign Article 6.

At the bottom of the form, list the name, e-mail address, and daytime telephone number of a contact person if this office has any questions or needs additional information to file the articles of incorporation. The email address is not disclosed to the public; this information is privatized in accordance with N.D.C.C. Section 44-04-18.21.

ASSISTANCE: If assistance is required to complete articles of incorporation, call (701) 328-2904.

FAX FILING: Documents and Credit Card Payment Authorization may be faxed to (701) 328-2992. A faxed filing does not expedite the process of the documents in the office of the Secretary of State.

EMAIL: Email is not a secure utility for the transmission of private information or credit card authorizations. **DO NOT EMAIL YOUR DOCUMENT TO THE SECRETARY OF STATE.**

MAILING INSTRUCTIONS: Send articles of incorporation and payment to:

Business Registration Unit
Secretary of State
State of North Dakota
600 E Boulevard Ave Dept 108
Bismarck ND 58505-0500

Telephone: (701) 328-2904

Toll Free: (800) 352-0867 (option 3)

Fax: (701) 328-2992

Website: sos.nd.gov

ANNUAL REPORT: An annual report is required of a nonprofit corporation on February 1st in the year after that in which the articles of incorporation are effective. The registered agent will be notified when the required reporting form is available.

**CREDIT CARD PAYMENT AUTHORIZATION**

SECRETARY OF STATE

SFN 51478 (04-2014)

(All items required to complete transaction)

Name			Telephone Number		
Address		City	State	ZIP Code	
<input type="checkbox"/> VISA <input type="checkbox"/> MasterCard <input type="checkbox"/> Discover			Signature (Required by Credit Card Companies)		
Account Number		CSC Number *	Card Expires Month	Card Expires Year	Date

* (CSC is the three-digit security code on the back of your card by the signature)

Charitable Organizations and Professional Fundraisers

Charitable organizations and professional fundraisers soliciting contributions in North Dakota are governed by North Dakota Century Code, Chapter 50-22. A copy of the law is available on the secretary of state's website at sos.nd.gov or may be requested from the secretary of state's office for a fee. On the secretary of state's website, charitable organization information is in the Nonprofit Services section. Forms are included in this publication and are also available on the secretary of state's website. Contact information for the secretary of state's office is listed on the title page of this guide.

What is a Charitable Organization?

A *charitable organization* participates in or claims to participate in solicitation for a charitable purpose. A *charitable purpose* is the charitable, benevolent, philanthropic, religious, social service, welfare, educational, cultural, artistic or public interest purpose either actual or claimed by a charitable organization.

A charitable organization **does not** include:

1. An organization that solicits funds for an institution of higher learning.
2. An organization that uses unpaid volunteer fundraisers to solicit funds for a political subdivision or other government entity or for a civic or community project in which the contributions received are used solely for the project and none of the contributions pass on to the benefit of any individual.
3. A private or public elementary or secondary school.
4. An organization or person that solicits contributions for any person specified by name at the time of the solicitation if all contributions received are transferred within a reasonable time after receipt to the person named or that person's parent, guardian or conservator with no restriction on expenditure of the contributions and with no deduction.
5. A religious society or organization that is exempt from filing a federal annual information return.
6. Any candidate for national, state or local elective office or political party or other committee required to file information with the federal election commission, a state election commission or an equivalent office or agency.

What is Meant by the Solicitation of Contributions?

A *contribution* is provided in response to a solicitation and includes cash or the promise, grant or pledge of any money, credit, assistance or property of any kind or value, including the promise to pay. If a charitable organization offers goods and services to the public as a method for obtaining contributions, the contribution is considered the difference between the cost of the goods and services to the charitable organization and the price at which the goods or services are resold to the public. A contribution does not include fees, dues or assessments paid by members of an organization if:

1. Membership in the organization is not in exchange for a contribution.
2. The contributor's membership does not have any additional benefit other than the right to vote or otherwise participate in the organization and the right to receive literature.

A *solicitation* is the request for a contribution on the understanding that the contribution will be used in whole or in part for a charitable purpose. A solicitation occurs regardless of whether the party solicited actually makes a contribution. Solicitations include:

1. An oral request made in person or by telephone, radio, television, electronic communication including the internet, or other advertising or communication media.
2. A written or other recorded or published request, that is mailed, sent, delivered, circulated, distributed, posted in a public place, or advertised or communicated through telephone, radio, television, electronic communication, including the internet or other advertising or communication media.
3. A sale of or attempt to sell any good or service priced above fair market value or if some portion of the purchase price will be used for a charitable purpose.
4. An announcement inviting the public to attend an assembly, event, exhibition, performance or social gathering of any kind where admission to the event is in exchange for a contribution or in which contributions will be solicited at the function.

How to Register as a Charitable Organization (N.D.C.C. § 50-22-02)

For a charitable organization to solicit contributions in North Dakota, it must first register with the secretary of state. This is accomplished by filing a [Charitable Organization Registration Statement \(SFN 11300\)](#) with the secretary of state. The national form of the charitable organization registration statement is also accepted by the secretary of state for registration of charitable organizations in North Dakota. The registration statement contains the following required information:

1. Legally established name.
2. Name(s) under which it solicits contributions.
3. Form of organization.
4. Date and place of organization.
5. Business telephone number.
6. Street and mailing address of principal office in North Dakota, if any.
7. Name and address of the person having custody of its books and records within North Dakota.
8. Total compensation, including salaries, fees, bonuses, fringe benefits, severance payments and deferred compensation, paid to employees by the charitable organization and all its affiliated organizations.
9. Federal and state tax-exempt status.
10. Denial at any time by any governmental agency or court of the right to solicit contributions.
11. Date on which the fiscal (accounting) year of the charitable organization ends. A charitable organization's fiscal (accounting) year is the twelve (12) month period for which it maintains its financial records.
12. General purposes for which organized.
13. General purposes for which contributions to be solicited will be used.
14. Methods by which solicitation will be made.
15. Board, group or individual having final discretion or authority as to the distribution and use of contributions received.
16. Amount of total contributions received during the last ended fiscal (accounting) year.

A financial statement detailing the organization's operation for the twelve (12) months immediately prior to the filing of a registration statement must be included with the registration statement.

The registration statement must be executed by an officer of the charitable organization. An affiliate may file a registration statement on behalf of the parent organization or a parent organization may file a registration on behalf of its affiliate. These registrations may be in addition to or part of the affiliate's or parent organization's own registration statement.

Prior to acceptance of the registration statement, the name of the registrant must be registered in some manner with the secretary of state, for example, as a nonprofit corporation, nonprofit limited liability company, or in the case of a foreign entity, a certificate of authority.

Filing fee – The filing fee for the registration statement is \$25.

Registration period – A charitable organization's registration does not expire, but it can be revoked. Also, the secretary of state may deny or suspend a charitable organization's application for registration if the organization fails to file the required annual report information with the secretary of state or if the charitable organization violates state law. A charitable organization's registration fee will not be refunded if its registration is revoked.

Annual Filing Requirements for Charitable Organizations (N.D.C.C. § 50-22-04)

A Charitable Organization Annual Report (SFN 11302) must be filed with the secretary of state every year. The annual report must include a financial statement that covers the twelve (12) month period immediately prior to the end of the previous fiscal (accounting) year. The financial statement does not need to be certified, but must:

1. Include a balance sheet, statement of income and expenses and a statement of functional expenses.
2. Be signed by an officer of the charitable organization.
3. Be filed on or attached to forms provided by the secretary of state.
4. Be prepared in accordance with generally accepted accounting principles and make full disclosure of the following, including necessary allocations between each item and the basis of the allocations:
 - a. Total receipts and total income from all sources;
 - b. Cost of management and general;
 - c. Program services;
 - d. Cost of fundraising;
 - e. Cost of public education;
 - f. Funds or properties transferred out of state with explanation as to recipient and purpose, unless the information is not reasonably available, in which case the charitable organization may, with the approval of the secretary of state, provide a reasonable estimate of the amounts transferred;
 - g. Total net amount disbursed or dedicated within North Dakota, broken down into total amounts disbursed or dedicated for each major purpose, charitable or otherwise, unless the information is not reasonably available, in which case the charitable organization, with the approval of the secretary of state, may provide a reasonable estimate of the required information;
 - h. Names of professional fundraisers used during the fiscal (accounting) year and the financial compensation and profit resulting to each professional fundraiser; and
 - i. Total compensation, including salaries, fees, bonuses, fringe benefits, severance payments, and deferred compensation, paid to employees by the charitable organization and all its affiliated organizations.

The information provided in the annual report must be as of close of the business on December 31st prior to the annual report filing deadline or it may also be provided as of the close of business on the last day of the fiscal (accounting) year prior to the filing deadline of the annual report.

Filing fee – The filing fee for the annual report is \$10.

Filing deadline – The annual report must be postmarked on or before September 1st each year and be sent to the secretary of state in a properly addressed, postage prepaid, sealed envelope. If an initial registration is filed by a charitable organization in July or August, the first annual report is due September 1st of the following year.

Filing extensions – In the event a charitable organization needs a filing extension for its annual report, the charitable organization must send a written application for extension to the secretary of state. The application for extension must be received by the secretary of state prior to the filing deadline. An extension may be granted for one single year or it may be granted permanently for subsequent years, which is known as a *standing extension*. If a charitable organization's fiscal (accounting) year ends within three (3) months prior to the filing deadline, it may request that the extension apply to annual reports for subsequent years until the fiscal (accounting) year is changed. The filing deadline may not be extended past December 1st.

Failure to file annual report – If a charitable organization fails to file the annual report or pay the necessary filing fee, the organization is prohibited from soliciting in North Dakota and the registration of the organization is ineffective immediately. A new registration statement cannot be accepted from a charitable organization that has not filed its annual report until the organization files its overdue annual report and pays the applicable filing fee.

Additional information to maintain – If requested by the secretary of state or the attorney general, the charitable organization must promptly provide a copy of all tax or information returns, including all schedules and amendments, submitted by the charitable organization to the Internal Revenue Service for the annual report period. The charitable organization does not need to provide any schedules of contributors to the organization. The secretary of state or the attorney general may examine the accounts of any charitable organization conducting solicitation for funds within North Dakota. Every charitable organization must maintain a full and true record of its accounts in a form that will enable the charitable organization to accurately provide the necessary information to the secretary of state.

What is a Professional Fundraiser?

A *professional fundraiser* receives compensation from a charitable organization in exchange for soliciting contributions for that organization. A professional fundraiser solicits the contributions personally or employs, acquires or involves another person to solicit the contributions. A professional fundraiser may not solicit contributions for a charitable organization that is not registered with the secretary of state. A professional fundraiser may also be paid by a charitable organization to plan, manage, advise, consult or prepare material for, or concerning, the solicitation of contributions. Individuals who provide services to the charitable organization who **may not** be considered a professional fundraiser are:

1. Full-time salaried officer or employee of a charitable organization with permanent establishment in North Dakota.
2. Attorney, investment counselor or banker who advises a person to make a contribution to a charitable organization.

How to Register as a Professional Fundraiser (N.D.C.C. § 50-22-02.1)

A professional fundraiser must file a [Professional Fundraiser Registration \(SFN 11303\)](#) form with the secretary of state in order to act as a professional fundraiser. The registration contains the following required information:

1. Name of the professional fundraiser.
2. Street and mailing address and telephone number of the professional fundraiser.
3. Type of fundraising to be conducted in North Dakota.

4. Name of the auditor, accountant, employee, agent or other person who maintains or possesses the professional fundraiser's records.
5. List of all officers, agents or employees that will work under the professional fundraiser's direction.
6. List of all licensed charitable organizations that the professional fundraiser has contracts with in North Dakota. A copy of any contract between the professional fundraiser and any charitable organization must be submitted with the registration. The contract must:
 - a. Be in writing.
 - b. Contain information that will enable the secretary of state to identify the services the professional fundraiser will be providing, including whether the professional fundraiser will have custody of contributions at any time.
 - c. Be submitted within ten (10) days of the date of execution of the contract.

Registration fee – The professional fundraiser registration fee is \$100. A parent organization that files on behalf of one or more chapters, branches, or affiliates or any federated fundraising organization that files on behalf of its member agencies is only required to pay a single annual registration fee of \$100. The registration fee includes the parent organization or federate fundraising organization and the chapters, branches, affiliates, or member agencies included in the registration statement.

Registration expiration – Each registration expires September 1st unless the professional fundraiser files a new registration statement and pays an additional \$100 filing fee by September 1st. Registration information for professional fundraisers is considered public record.

Bond requirement – In addition to the registration statement, the professional fundraiser must file with the secretary of state a a bond in the amount of \$20,000 with the professional fundraiser as the principal obligor. A professional fundraiser may utilize more than one bond as long as the surety amounts total at least \$20,000. The bond must remain in full effect for the entire term of the registration in order for the professional fundraiser to maintain registration. The bond must apply to the state and to any person who may have a claim against the professional fundraiser for any liabilities resulting from the professional fundraiser's conduct of any activities. In addition to filing a new registration statement each year, a professional fundraiser must also submit a continuance certificate from the surety each year to maintain registration. The [Uniform Professional Fundraiser Surety Bond \(SFN 53947\)](#) form may be used to comply with this bond requirement.

Failure to Register – In the event a professional fundraiser does not file a registration statement or any other information required to be filed by the secretary of state or if the professional fundraiser violates the requirements to act as a professional fundraiser, the secretary of state may deny or suspend the professional fundraiser's registration statement.

Penalties for Solicitation Violations (N.D.C.C. § 50-22-05)

Any solicitation violation or failure to properly complete and promptly file any report, tax return or other information as required by state law is considered a class A misdemeanor. Conducting a solicitation after a registration is revoked is a class C felony. Penalties for these violations include civil penalties in an amount up to \$5,000 per violation and the denial of registration for a period of up to five (5) years.

Appendix B

Charitable Organization Registration Statement (SFN 11300)



**CHARITABLE ORGANIZATION
REGISTRATION STATEMENT**
SECRETARY OF STATE
SFN 11300 (07-2016)

For Office Use Only

ID Number:
WO Number:
License Number:
Issued By:
Secretary of State State of North Dakota 600 E Boulevard Ave Dept 108 Bismarck ND 58505-0500 Telephone: (701) 328-3665 Toll-Free: (800) 352-0867, option 8 Website: sos.nd.gov

FEE: \$25.00

ATTACHMENTS:

- ☐ IRS Determination Letter (or first page of pending application)
- ☐ Financial State or IRS Form 990
- ☐ List of names and addresses of all directors, officers, and trustees. Indicate the individuals having the financial discretion or authority as to the distribution and use of contributions received.
- ☐ List of total compensation, including salaries, fees, bonuses, fringe benefits, severance payments, and deferred compensation, paid to all employees by the charitable organization and all its affiliated organizations.
- ☐ Copy of agreement with professional fundraiser, if any.

SEE INSTRUCTIONS FOR FILING AND MAILING INFORMATION.

TYPE OR PRINT LEGIBLY

For reference, see North Dakota Century Code, Chapter 50-22.

1A. Legal name of organization		1B. Federal ID number	
1C. Name(s) under which the organization solicits contributions			
1D. Street and mailing address of principal executive office (street/RR, PO box, city, state, ZIP+4) Street address <u>MUST</u> be provided; may not be only a post office box.			
City	State	ZIP code	Telephone number
2A. Registrant is a(n) <input type="checkbox"/> Unincorporated nonprofit association <input type="checkbox"/> Nonprofit corporation <input type="checkbox"/> Nonprofit limited liability company <input type="checkbox"/> Trust			
2B. State of origin	2C. Year organized	2D. Is the organization exempt from state income tax? <input type="checkbox"/> Yes <input type="checkbox"/> No	
2E. Is the organization exempt from federal income taxes? If yes, attach a copy of your IRS determination letter. If the application is pending, attach a copy of the first page of the application. <input type="checkbox"/> Yes - Provide status: 501(c)(_____) <input type="checkbox"/> No <input type="checkbox"/> Application pending			
3. Method(s) of soliciting the organization anticipates using (check all that apply to your organization) <input type="checkbox"/> Direct mail <input type="checkbox"/> Grant writing <input type="checkbox"/> Local television <input type="checkbox"/> Telemarketing <input type="checkbox"/> Magazines or periodicals <input type="checkbox"/> Personal contact <input type="checkbox"/> Radio <input type="checkbox"/> Show or concert <input type="checkbox"/> Newspaper <input type="checkbox"/> Membership enrollment <input type="checkbox"/> Vending business <input type="checkbox"/> National television <input type="checkbox"/> Other - Describe: _____			
4. Period of time during which solicitation is to be conducted			
5. General purposes for which organized			
6. General purposes for which contributions to be solicited will be used			

7A. Name of person in charge of organization's books and records in North Dakota			Telephone number
7B. Address	City	State	ZIP code
8. Month and day accounting year ends		9. Total contributions the organization received during the last ended accounting year	
10. Complete the following for the most recent twelve-month accounting year (attach financial statement or IRS form 990)			
REVENUE (Must be completed)		EXPENSES (Must be completed)	
Contributions	\$	Program services	\$
Trust funds	\$	Solicitation expenses	\$
Gifts, bequests	\$	Salaries, wages, fringe benefits	\$
Grants	\$	Rent	\$
Interest from investments	\$	Accounting services	\$
Other revenue	\$	Professional fundraisers	\$
TOTAL REVENUE	\$ 0.00	Other expenses	\$
Excess or deficit	\$	TOTAL EXPENSES	\$ 0.00
Total assets	\$	END OF YEAR FUND BALANCE / NET WORTH	
Total liabilities	\$	(Assets minus liabilities)	\$ 0.00
11. Solicitation conducted by <input type="checkbox"/> Voluntary unpaid solicitors <input type="checkbox"/> Paid solicitors <input type="checkbox"/> Both			
12. If solicitation is provided in whole or part by paid solicitors, list the name and address of each professional fundraiser supplying the solicitors and a copy of the agreement. Attach an additional sheet if necessary. If a contract, written agreement, or statement of any arrangement is made between an applicant and professional fundraiser/solicitor after a solicitation registration, the applicant agrees to file a copy of such contract or agreement with the Secretary of State.			
12A. Name of professional fundraiser			Telephone number
Address	City	State	ZIP code
12B. Name of professional fundraiser			Telephone number
Address	City	State	ZIP code
13. Has the organization or any member thereof been involved in any civil or criminal litigation in the past year? <input type="checkbox"/> Yes - Attach a summary statement of the litigation, the outcome, and the parties involved. <input type="checkbox"/> No			
14. Has the organization been denied the right to solicit contributions, at any time, by any government or any court? <input type="checkbox"/> Yes - Attach an explanation. <input type="checkbox"/> No			
15. Supervisory/guiding/administrative/managing/governing body that adopted the resolution to execute this registration statement <input type="checkbox"/> Board of directors <input type="checkbox"/> Trustees <input type="checkbox"/> Managing group			16. Date resolution adopted
17. Must be signed and certified by an officer: I, the undersigned, certify that: <ul style="list-style-type: none"> I am a duly elected officer of the applicant organization and have been authorized to prepare and execute this application; The board of directors/trustees/managing group have supervised and will continue to supervise the finances of the organization and will continue to assume responsibility for determining matters of policy; The information supplied is true, correct, and complete to the best of my knowledge; and If I make a false statement in this registration, I may be subject to criminal penalties. 			
Printed name			Title
Signature			Date
18. Name of person to contact about this document		Email address	Daytime telephone number

CHARITABLE ORGANIZATION REGISTRATION STATEMENT

Solicitations for charitable purposes in the State of North Dakota are governed by the provisions of N.D.C.C., chapter 50-22. The law can be accessed from the Secretary of States website at sos.nd.gov.

Most organizations that solicit funds in North Dakota for charitable purposes must file the Charitable Organization Registration with the Secretary of State prior to the solicitation. The following are organizations that do **not** require the filing of this registration:

- An organization that solicits funds for an institution of higher learning;
- An organization that uses unpaid volunteer fundraisers to solicit funds for a political subdivision or other government entity or for a civic or community project in which the contributions received are used solely for the project and none of the contributions pass on to the benefit of any individual;
- A private or public elementary or secondary school;
- An organization or person that solicits contributions for any person specified by name at the time of the solicitation if all contributions received are transferred within a reasonable time after receipt to the person named or that person's parent, guardian or conservator with no restriction on expenditure of the contributions and with no deduction;
- A religious society or organization that is exempt from filing a federal annual information return; or
- Any candidate for national, state or local elective office or political party or other committee required to file information with the federal election commission, a state election commission or an equivalent office or agency.

FILING FEE: The filing fee is \$25.00. Checks must be payable to "Secretary of State" and must be for U.S. negotiable funds. Payment may also be made by credit card using Visa, MasterCard, Discover, or American Express.

ATTACHMENTS: Check the box(es) to indicate the documentation supporting this application. **All** items listed must be attached except the copy of an agreement with a professional fundraiser is only required if a professional fundraiser is employed.

OTHER REQUIRED REGISTRATION: Other registration with the Secretary of State must be made to be a qualified registrant:

- A North Dakota nonprofit corporation or LLC must have its Articles on file with the Secretary of State and be in good standing.
- A nonprofit corporation or LLC organized under the laws of another jurisdiction must obtain a certificate of authority to conduct its affairs in North Dakota. The authority must be active and in good standing.
- A trust or unincorporated nonprofit association must file a Trade Name Registration which must be active.

The following numbered instructions correspond to the numbered sections on the form.

- 1A. Provide the correct name **EXACTLY** as reflected on the Articles of incorporation or organization filed with the Secretary of State or as reflected on the Certificate of Authority or Trade Name Registration issued by the Secretary of State.
- 1B. Please provide the applicants federal ID number, if you have one.

PRIVACY: In accordance with N.D.C.C., Chapter 44-04, Federal ID numbers are not disclosed to the public. They are used by the Secretary of State to maintain accurate files. Therefore, while voluntary disclosure is requested, failure to do so will not result in rejection of the application.
- 1C. Provide any other names other than the name provided in number 1A under which solicitation will occur. All names other than the name in number 1A must be registered as Trade Names with the Secretary of State; but, the license will be issued in the name provided in number 1A.
- 1D. Provide the street **and** mailing address of the principal executive office of the organization named in 1A. A complete address must include a street or rural address, a post office box (if applicable), the city, state, and ZIP code plus 4-digit extension. The address cannot only be a post office box number.
- 2A. Select the organization structure which best defines the registrant.
- 2B. Provide the state or country in which the registrant is organized.
- 2C. Provide the year in which the registrant was organized.
- 2D. Check the box that indicates if the registrant is exempt from North Dakota income tax.
- 2E. Check the box that indicates if the registrant is exempt from federal income tax, and if so, provide the status claimed under federal laws.
3. Check the box(es) indicating the method(s) of solicitation anticipated in North Dakota. If "Other" than those listed, please describe.
4. Define the period of time during which solicitation is to be conducted.
5. Describe the general purpose for which the organization is organized.
6. Describe the purposes for which contributions to be solicited will be used.
- 7A. Provide the name of the person in charge of the organization's books or records in North Dakota.
- 7B. Provide the address of the person named in number 7A.
8. Provide the month and day when the registrant's accounting year ends.



*Three-digit (Visa, MasterCard, or Discover) or four-digit (American Express) security code

Appendix C

Professional Fundraiser Registration (SFN 11303)



PROFESSIONAL FUNDRAISER REGISTRATION

SECRETARY OF STATE

SFN 11303 (06-2016)

For Office Use Only

ID Number:
WO Number:
License Number:
Issued By:
Secretary of State State of North Dakota 600 E Boulevard Ave Dept 108 Bismarck ND 58505-0500 Telephone: (701) 328-3665 Toll-Free: (800) 352-0867, option 8 Website: sos.nd.gov

FEE: \$100.00

ATTACHMENTS:

- ☐ Bond in the sum of \$20,000 payable to the state of North Dakota and any person having a cause of action against the fundraiser
- ☐ Copy of any contract to solicit in North Dakota between the fundraiser and any charitable organization
- ☐ Summary regarding litigation or criminal record for any party listed in number 2

SEE INSTRUCTIONS FOR FILING AND MAILING INFORMATION.

TYPE OR PRINT LEGIBLY

For reference, see North Dakota Century Code, Chapter 50-22.

1A. Full legal name of business or individual applicant			1B. Social security number/FEIN	
1C. Street and mailing address of principal office		City	State	ZIP code
1D. Business type (check one)				
<input type="checkbox"/> Individual (sole proprietor) <input type="checkbox"/> Corporation <input type="checkbox"/> Limited liability company				
<input type="checkbox"/> General partnership <input type="checkbox"/> Limited partnership <input type="checkbox"/> Limited liability partnership				
<input type="checkbox"/> Limited liability limited partnership <input type="checkbox"/> Other - Define: _____				
1E. State or jurisdiction of origin		1F. Date organized		1G. Telephone number
1H. Nature of business conducted by firm other than professional fundraising				
2. If applicant is:				
<ul style="list-style-type: none">• An individual or general partnership: Complete all information below.• A corporation or limited liability company: Provide information concerning officers, directors, executive personnel, and owners of 10% of capital stock or membership interests.• A limited partnership, limited liability partnership, or limited liability limited partnership: Provide information for general or managing partners. Attach an additional sheet if necessary.				
*For all business types: If any person listed has been involved in any civil litigation, attach a summary of the litigation, the outcome, and the parties involved.				
2A. Full name		Title or relationship to business		Home telephone number
Residential address		City	State	ZIP Code
Birth date	Birth place			Social security number/FEIN
Driver's license number	State where issued	Alias(es) used (if none, so state)		*Criminal record? <input type="checkbox"/> Yes <input type="checkbox"/> No
2B. Full name		Title or relationship to business		Home telephone number
Residential address		City	State	ZIP Code
Birth date	Birth place			Social security number/FEIN
Driver's license number	State where issued	Alias(es) used (if none, so state)		*Criminal record? <input type="checkbox"/> Yes <input type="checkbox"/> No
2C. Full name		Title or relationship to business		Home telephone number
Residential address		City	State	ZIP Code
Birth date	Birth place			Social security number/FEIN
Driver's license number	State where issued	Alias(es) used (if none, so state)		*Criminal record? <input type="checkbox"/> Yes <input type="checkbox"/> No

2D. Full name		Title or relationship to business		Home telephone number	
Residential address		City		State	ZIP Code
Birth date		Birth place			Social security number/FEIN
Driver's license number		State where issued	Alias(es) used (if none, so state)		*Criminal record? <input type="checkbox"/> Yes <input type="checkbox"/> No
3. Fundraising methods to be conducted in North Dakota (check all that apply to your organization)					
<div><input type="checkbox"/> Mail <input type="checkbox"/> Grant writing <input type="checkbox"/> Local television <input type="checkbox"/> Telemarketing <input type="checkbox"/> Magazines or periodicals</div> <div><input type="checkbox"/> Personal contact <input type="checkbox"/> Radio <input type="checkbox"/> Show or concert <input type="checkbox"/> Newspaper <input type="checkbox"/> Membership enrollment</div> <div><input type="checkbox"/> Vending business <input type="checkbox"/> National television <input type="checkbox"/> Other - Describe: _____</div>					
4. Auditor, accountant, employee, agent, or other person who maintains or possesses professional fundraiser's records					
Name				Telephone Number	
Address		City		State	ZIP Code
5. List all officers, agents, or employees employed to work in North Dakota and are under registrant's direction. Attach an additional sheet if necessary.					
COMPLETE MAILING ADDRESS					
NAME		STREET	CITY	STATE	ZIP CODE TERMS OF REMUNERATION
6. List all charitable organizations with which applicant has contracts to act as a professional fundraiser in North Dakota. A professional fundraiser may not solicit on behalf of a charitable organization that is not registered, unless the organization is exempt from registration.					
NAME OF CHARITABLE ORGANIZATION		SOLICITATION LICENSE NUMBER		CONTACT PERSON	TELEPHONE NUMBER
7. Licenses/registrations/permits denied, cancelled, or revoked in any other state (If none, indicate with N/A below)					
ISSUED BY (AGENCY)		CITY	STATE	REASON	DATE OF ACTION
				<input type="checkbox"/> Denied <input type="checkbox"/> Cancelled <input type="checkbox"/> Revoked	
8. I hereby make application as a professional fundraiser in the state of North Dakota. I certify the statements made herein to be true and complete, and are made for the purpose of complying with the requirements of North Dakota Century Code, Chapter 50-22.					
Signature of professional fundraiser				Title	

State	County	Notary Stamp
The foregoing instrument was acknowledged before me on	Date	
Signature of notary public or other authorized officer		
Commission expiration date (if not listed on stamp)		

PROFESSIONAL FUNDRAISER REGISTRATION INSTRUCTIONS

An individual or organization who, for financial compensation or profit, performs for a charitable organization a service in connection with which contributions are, or will be, solicited in North Dakota must be registered with the Secretary of State as a professional fundraiser **before** any such services are commenced. Services could include soliciting, planning, management, advice, consultation, or preparation of materials for, or with respect to the solicitation in this state. Activities of a professional fundraiser are governed by the provisions of N.D.C.C., chapter 50-22. The law can be accessed from the Secretary of State's website at sos.nd.gov.

EXPIRATION OF REGISTRATION: Each registration expires on September first unless, prior to September first, the fundraiser again re-files a registration statement and fee with the Secretary of State.

FILING FEE: The filing fee is \$100.00. Checks must be payable to "Secretary of State" and must be for U.S. negotiable funds. Payment may also be made by credit card using Visa, MasterCard, Discover, or American Express.

ATTACHMENTS: Check the box(es) to indicate the documentation supporting this application.

- A bond in the amount of \$20,000 **is required and must be attached**. It must be for the entire term of the registration and **must** name the applicant as the principal obligor. The bond must run to the state of North Dakota and to any person who may have a cause of action against the principal obligor for any liabilities resulting from the obligor's conduct of any activities subject to the governing statutes.
- A copy of the written contract(s) between the fundraiser and charitable organization(s) must be attached. The contract must disclose the services the fundraiser is to provide and include whether the fundraiser will at any time have custody of contributions.
- A summary of any litigation or criminal record for any party named in number 2.

OTHER REQUIRED REGISTRATION: Other registration with the Secretary of State must be made to be a qualified registrant:

- A North Dakota corporation or limited liability company that is the registrant must have its Articles on file with the Secretary of State and be in good standing.
- A registrant that is a North Dakota limited partnership, limited liability partnership, or limited liability limited partnership must be registered with the Secretary of State and be in good standing.
- A registrant that is a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership organized under the laws of another jurisdiction must obtain a certificate of authority to conduct its affairs in North Dakota. The authority must be active and in good standing.
- A registrant that is a trust or unincorporated association must have an active Trade Name Registration on file with the Secretary of State.
- A registrant defined as "Other" in number 1D and not mentioned above shall be considered on a case-by-case basis and will be notified of any other registration requirements.
- A charitable organization listed in number 6 must have a Charitable Organization Registration Statement on file with the Secretary of State, or be an exempt organization as defined by statute.
- After the filing of the Professional Fundraiser Registration, any contracts entered into with any charitable organizations must be submitted to the Secretary of State within ten days of the execution of those contracts.

The following numbered instructions correspond to the numbered sections on the form:

- 1A. Provide the correct name **EXACTLY** as reflected on the Articles of incorporation or organization filed with the Secretary of State or as reflected on the Certificate of Authority, Trade Name Registration, or other registration on file with the Secretary of State.
- 1B. Provide the applicant's social security number or federal ID number, if you have one.

PRIVACY: In accordance with N.D.C.C., Chapter 44-04, social security and federal ID numbers are not disclosed to the public. They are used by the Secretary of State to maintain accurate files. Therefore, while voluntary disclosure is requested, failure to do so will not result in rejection of the application.

- 1C. Provide the street **and** mailing address of the principal executive office of the registrant named in 1A. A complete address must include a street or rural address, a post office box (if applicable), the city, state, and ZIP code plus 4-digit extension.
- 1D. Select the organization structure that best defines the registrant.
- 1E. Provide the state or jurisdiction of the registrant's origin.
- 1F. Provide the date on which the registrant was organized in the state or jurisdiction of origin.
- 1G. Provide the registrant's telephone number.
- 1H. Provide the nature of business conducted by the registrant if any other than fundraising.

PROFESSIONAL FUNDRAISER REGISTRATION INSTRUCTIONS (continued)

2. Provide the name of an individual registrant, or partners of any partnership registrant, or officers, directors, or executive personnel and owners of 10% of capital stock or membership interests. For each person named, provide the title or relationship to the registrant, telephone number, address, place and date of birth, driver's license number and state where issued, any alias used by the person, their Social Security/FEIN, and indication whether the person has any criminal record. If "yes," attach a summary of the litigation or criminal record.
3. Check all applicable boxes to indicate the fundraising methods to be conducted in North Dakota.
4. Provide the name of the auditor, accountant, employee, or person who maintains or possesses the books or records of the registrant.
5. List all officers, agents, or persons employed to work in North Dakota under the registrant's direction. Provide the names, complete mailing address, and terms of remuneration for each. Attach an additional sheet if necessary.
6. List all charitable organizations with which the registrant has contracts to act as professional fundraiser in North Dakota.
7. Identify any other agency in any jurisdiction that has denied, cancelled, or revoked any license, registration, or permit of the registrant. For any listings, provide the reason and date of action.
8. The registration must be signed and dated by the registrant or by an authorized officer of the registrant. The signature must be notarized by a notary public.

ASSISTANCE: If assistance is required to complete the registration, contact the Secretary of State at (701) 328-3665.

FAX FILING: The document and Credit Card Payment Authorization may be faxed to (701) 328-1690. A faxed filing does not expedite the process of the document in the office of the Secretary of State.

EMAIL: Email is not a secure utility for the transmission of private information or credit card authorizations. **DO NOT EMAIL YOUR DOCUMENT TO THE SECRETARY OF STATE.**

MAILING INSTRUCTIONS: Send documents and filing fees to:

Secretary of State
State of North Dakota
600 E Boulevard Ave Dept 108
Bismarck ND 58505-0500

Telephone: (701) 328-3665

Toll-Free: (800) 352-0867 (option 8)

Fax: (701) 328-1690

Website: sos.nd.gov

ANNUAL REREGISTRATION: To continue registration, a Professional Fundraiser Registration (SFN 11303) form must be filed with the Secretary of State every year before September 1st. Registration forms are prescribed by the Secretary of State. They are available from the Secretary of State's website at sos.nd.gov and are also mailed to the address of the principal executive office.



CREDIT CARD PAYMENT AUTHORIZATION

SECRETARY OF STATE

SFN 51478 (02-2016)

WO Number (For Office Use Only):

Amount

						.		
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Name																	Telephone Number						
Address										City					State		ZIP Code						
Card Type <input type="checkbox"/> Visa <input type="checkbox"/> MasterCard <input type="checkbox"/> Discover <input type="checkbox"/> American Express																		Signature (required by credit card companies)					
Account Number										CSC Number*					Card Expires (MMYY)			Date					
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>		

*Three-digit (Visa, MasterCard, or Discover) or four-digit (American Express) security code

Nonprofit Corporations/Organizations and the Attorney General

Provided by the Attorney General

The North Dakota Attorney General has statutory and common-law authority in regard to nonprofit corporations and organizations in the state of North Dakota. The Attorney General's enforcement authority includes investigation and prosecutorial authority in the areas of charitable solicitations, "do not call" registry, and accountability of a nonprofit corporation's board of directors, officers, members and assets in the corporation's regular operations, mergers or dissolutions. The Attorney General's enforcement authority in these areas is handled by the Attorney General's Consumer Protection and Antitrust Division (CPAT), which may be contacted as follows:

Office of Attorney General
Consumer Protection & Antitrust Division
Gateway Professional Center
1050 E. Interstate Ave., Suite 200
Bismarck, ND 58503-5574
(701) 328-3404 (Telephone)
(701) 328-5568 (Facsimile)
cpat@nd.gov (e-mail)
attorneygeneral.nd.gov (website)

Charitable Solicitations

The Attorney General jointly enforces with the Secretary of State North Dakota Century Code chapter 50-22 relating to charitable solicitations by charitable organizations and professional fundraisers. Any charitable organization or professional fundraiser that engages in charitable solicitations in this state should carefully review N.D.C.C. ch. 50-22 and ensure compliance with these statutes. In addition to N.D.C.C. ch. 50-22, the Attorney General uses North Dakota Century Code chapter 51-15, commonly referred to as the "Consumer Fraud Law" to investigate and/or prosecute fraudulent or deceptive charitable solicitations. A copy of N.D.C.C. ch. 51-15 is located at the end of this section.

A charitable organization may not solicit contributions unless the organization is registered with the Secretary of State as required by N.D.C.C. § 50-22-02. Pursuant to N.D.C.C. § 50-22-02.1 a person may not act as a professional fundraiser unless that person has registered with the Secretary of State. N.D.C.C. § 50-22-05 provides that any person conducting a solicitation in violation of ch. 50-22, or failing to complete and file any report required under ch. 50-22 is guilty of a class A misdemeanor. That section further provides that any person conducting a solicitation after that person's registration is revoked is guilty of a class C felony.

N.D.C.C. § 50-22-04.3 prohibits charitable organizations and professional fundraisers from engaging in any deceptive acts or practices, fraud, misrepresentations, *et cetera*. N.D.C.C. § 51-15-02 of the consumer fraud law also prohibits these organizations from engaging in fraudulent solicitations.

N.D.C.C. § 50-22-05 provides the Attorney General with enforcement remedies and penalties and permits the Attorney General to bring legal actions against charitable organizations or professional fundraisers who have engaged in violations of ch. 50-22, or who have engaged in any fraudulent solicitations. The Attorney General may obtain injunctive relief, restitution and civil penalties up to \$5,000 per violation. The Attorney General may also seek the remedies and penalties of N.D.C.C. ch. 51-15.

Do Not Call Registry and Enforcement

The fifty-eighth legislative assembly of North Dakota created North Dakota Century Code chapter 51-28 initiating a "do not call" registry and other related telemarketing protections for North Dakota telephone

subscribers to stop unwanted and unsolicited telemarketing calls or messages on their telephone answering machines.

N.D.C.C. § 51-28-09 gives the Attorney General authority to establish and maintain a list of telephone subscribers that do not want to receive unsolicited telephone calls. N.D.C.C. § 51-28-06 prohibits telephone solicitations to subscribers that have placed their residential and wireless telephone numbers on the Attorney General's do not call registry.

Even if subscribers have registered with the "Do Not Call" list, subscribers may still receive some calls permitted by law. According to North Dakota law (N.D.C.C. § 51-28-01), the following are exceptions and are not considered telephone solicitations:

- Calls from a person or business that has previously received your written permission to call.
- Calls from a person or business that has established a business relationship with you during the past 2 years.
- Calls by charitable organizations when the caller is a volunteer or employee of that organization.
- Calls that solicit the expression of ideas, opinions or votes, unless the communication is a text message.
- Calls for sales that won't be completed until later face-to-face meeting between you and the person making the call, unless the communication is a text message.
- Calls by political parties, organizations or candidates, unless the communication is a text message.

Under this legislation, telemarketers cannot (even if subscribers have not signed up on the do not call registry):

- Call before 8:00 AM or after 9:00 PM local time.
- Block a subscriber's Caller ID service.
- Use an automatic dialing-announcing device or deliver a prerecorded or synthesized voice message to a subscriber unless the subscriber has consented to the message and the message is immediately preceded by a live operator who obtains the subscriber's consent before the message is delivered. The operator must tell you what company is calling, what it is promoting and whether it intends to solicit money from you.
- The automatic dialing-announcing device must disconnect within ten seconds after the subscriber hangs up and may only use a random or sequential number generator in certain circumstances.

Telemarketers must state at the beginning of the call the caller's name, telephone number, location and the business, pursuant to N.D.C.C. § 51-28-07.

Under North Dakota law, only calls made by employees or volunteers of charitable organization on behalf of the charitable organization are an exception to do not call requirements. Charitable organizations that use paid professional fundraisers must comply with the subscriber's do not call registration. It would be a violation of chapter 51-28 for a paid professional fundraiser to call a subscriber on the do not call registry.

The Attorney General may enforce violations of the do not call registry and other provisions of chapter 51-28 and may seek injunctions and other remedies including civil penalties of up to \$2,000 per violation.

The do not call statutes include private enforcement provisions for private parties who may bring a private right of action for violations of the do not call registry and other violations of chapter 51-28 including an injunction and other remedies with actual damages or damages up to \$2,000 per violation, whichever is greater.

Nonprofit Corporation Accountability

N.D.C.C. ch. 10-33 “Nonprofit Corporations” grants the Attorney General authority to ensure accountability of a nonprofit corporation’s board of directors, officers, members and assets in the corporation’s regular operations, mergers or dissolutions. Chapter 10-33 is voluminous and is not reprinted in this booklet. However, copies of the statute are available in the North Dakota Century Code in almost any local or state government office, or local library. To obtain copies of any North Dakota statutes online via the Internet, you may access www.nd.gov and then click on the following topics: “Government,” “State Government,” “Laws and Regulations,” and “Century Code.”

Chapter 10-33 grants the Attorney General authority to investigate and/or initiate legal action if the corporation, its board of directors, or its officers are in violation of chapter 10-33. The Attorney General may act on his own accord, on behalf of the Secretary of State or upon the complaint of another. In many instances it would be most appropriate for the directors, officers or members of the nonprofit organization to initiate corrective action. The Attorney General particularly has a role in protecting the public interest in a charitable nonprofit organization. The Attorney General, however, will consider several factors or criteria to determining whether action by the Attorney General is necessary and appropriate.

N.D.C.C. § 10-33-36 addresses nonjudicial removal of directors by the board of directors or members.

N.D.C.C. § 10-33-37. The Attorney General may become involved in the removal of directors in a judicial proceeding in circumstances in which a director engaged in fraudulent or dishonest conduct, or abuse of authority or discretion with respect to the corporation, *et cetera*.

N.D.C.C. §§ 10-33-21, 10-33-95, 10-33-100, 10-33-105, and 10-33-108. 2017 Legislative Changes to Designation and Priority of Restricted Assets. In the 2017 legislative session the Attorney General prepared and the legislative assembly adopted changes to how nonprofit corporations must manage restricted funds donated and held for a special purpose. Failure of a corporation to follow these requirements are sanctionable against the corporation in an enforcement action.

N.D.C.C. § 10-33-21(7). All assets received by a corporation from donors must be designated as temporarily restricted or permanently restricted in accordance with generally accepted accounting principles and disclosed on the corporation’s financial statements. A corporation may not pledge as collateral, grant a security interest in, or borrow from assets designated as permanently restricted funds.

N.D.C.C. § 10-33-95. (Remains unchanged from law prior to August 1, 2017); however, it interplays with the other 2017 changes described herein.) This section provides that if a corporation dissolves, merges or substantially changes the use or purpose for which the corporation will use corporate assets, then those assets may not be diverted from the uses and purposed for which the assets were originally received and held, or the uses and purposes expressed or intended by the original donor. The Attorney General in the public interest would enforce this provision of the statutes.

N.D.C.C. § 10-33-100(3). Property must be distributed under 10-33-105.

N.D.C.C. § 10-33-105. Distribution of assets. (Remains unchanged from prior law.)

1. In performing the duties under section 10-33-100, the board, or the officers acting under the direction of the board, shall distribute the assets of the corporation in the following order of priority:
 - a. Distribution of assets received and held for a special use or purpose under subsection 2;
 - b. Payment of costs and expenses of the dissolution proceedings, including attorney’s fees and disbursements;
 - c. Payment of debts, obligations, and liabilities of the corporation;

- d. Distribution of assets pursuant to articles or bylaws of the dissolving corporation or the rules or canons of another organization under subsection 3; and
- e. Distribution of remaining assets under subsection 4.

2. Assets of the corporation may not be diverted from the uses and purposes for which the assets have been received and held or from the uses and purposes expressed or intended by the original donor. (Emphasis added.)

- 3. When the articles or bylaws of the dissolving corporation, or the rules or canons of another organization by which the dissolving corporation is bound, provide for a particular distribution of the assets of the dissolving corporation, the assets must be distributed accordingly.
- 4. The distribution of assets held for or devoted to a charitable or public use or purpose is subject to section 59-20-01.

N.D.C.C. § 10-33-108(4)(a). Procedure in involuntary or supervised voluntary dissolution.

- 4. The assets of the corporation or the proceeds resulting from a sale, lease, transfer, or other disposition must be applied in the following order of priority to the payment and discharge of:

- a. **Assets received and held for a special use or purpose must be distributed pursuant to subsection 2 of section 10-33-105; (Emphasis added.)**

N.D.C.C. § 10-33-107 addresses involuntary liquidation proceedings and indicates the circumstances under which a court may grant equitable relief or dissolve a corporation and liquidate its assets. The court may do so in an action by the Attorney General when it is established that:

- 1. The articles and certificate of incorporation were obtained through fraud;
- 2. The corporation should not have been formed under this chapter;
- 3. The corporation failed to comply with the requirements of sections 10-33-02 through 10-33-19 essential to incorporation under or election to become governed by this chapter;
- 4. The corporation has flagrantly violated a provision of this chapter, has violated a provision of this chapter more than once, or has violated more than one provision of this chapter;
- 5. The corporation has engaged in an unauthorized act, contract, conveyance, or transfer or has exceeded its powers;
- 6. The corporation has acted, or failed to act, in a manner that constitutes surrender or abandonment of the corporate purpose, franchise, privileges, or enterprise;
- 7. The corporation has liabilities and obligations exceeding the corporate assets;
- 8. The period of corporate existence has ended without extension;
- 9. The corporation has failed for a period of ninety days to pay fees, charges, or penalties required by this chapter;
- 10. The corporation has failed for a period of thirty days:
 - a. To appoint and maintain a registered agent in this state; or
 - b. After changing its registered office, to file with the secretary of state a statement of the change;

11. The corporation has answered falsely or failed to answer a reasonable written interrogatory from the secretary of state or the attorney general to the corporation, its officers, or directors;
12. The corporation has solicited property and has failed to use it for the purpose solicited; or
13. The corporation has fraudulently used or solicited property.

Pursuant to N.D.C.C. § 10-33-122, a corporation that holds assets for a charitable purpose, or is exempt under 501(c)(3) of the Internal Revenue Code, must notify the Attorney General of its intent to dissolve, merge or transfer all or substantially all of its assets. The notice must include:

- a. The purpose of the corporation that is giving the notice;
- b. A list of assets owned or held by the corporation for charitable purposes;
- c. A description of restricted assets and purposes for which the assets were received;
- d. A description of debts, obligations, and liabilities of the corporation;
- e. A description of tangible assets being converted to cash and the manner in which they will be sold;
- f. Anticipated expenses of the transaction, including attorney's fees;
- g. A list of persons to whom assets will be transferred, if known;
- h. The purposes of persons receiving the assets; and
- i. The terms, conditions, or restrictions, if any, to be imposed on the transferred assets.

The statute prohibits a transfer of assets until 45 days after notice has been provided to the Attorney General and the Attorney General may extend the waiting period for an additional 30 days.

N.D.C.C. § 10-33-123 provides powers to the Attorney General when it appears to the Attorney General it is in the public interest that an investigation should be made to determine whether the Attorney General should commence a proceeding pursuant to chapter 10-33. The Attorney General may examine under oath any person in connection with the affairs of the corporation, examine any record, book, document or paper as the Attorney General determines necessary, or issue subpoenas to any person.

Hospital or Nursing Home Mergers or Acquisitions

N.D.C.C. §§10-33-144 through 10-33-148 authorizes the Attorney General to review and investigate proposed agreements or transactions by a nonprofit operating or controlling a hospital or nursing home. N.D.C.C. §10-33-144 requires a nonprofit corporation operating or controlling a hospital or nursing home to notify the attorney general in writing ninety days before closing an agreement or a transaction that will:

- a. Sell, lease, transfer, exchange, option, convey, or otherwise dispose of to a for-profit corporation or entity or a nonprofit corporation or entity if fifty percent or more of the assets of the selling corporation are involved in the agreement or transaction;
- b. Transfer control, responsibility, or governance of fifty percent or more of the assets or operations of the nonprofit corporation to a for-profit corporation or entity or another nonprofit corporation or entity; or

- c. Result in any for-profit corporation or entity or another nonprofit corporation or entity having control of, governance of, or the power to direct management and policies of the nonprofit corporation operating or controlling a hospital, nursing home, or related organization.

The attorney general may review and investigate the proposed agreement or transaction and may require the parties to the agreement or transaction to provide any additional information relevant to the review or investigation. The attorney general may issue subpoenas to any person directly related to the proposed agreement or transaction, conduct hearings in aid of an investigation or inquiry, obtain public comment, and retain experts if necessary and reasonable.

The attorney general may review the proposed agreement or transaction to determine whether consummation of the proposed agreement or transaction is consistent with the purposes of the nonprofit corporation or entity operating or controlling a hospital or nursing home and the fiduciary obligations of the officers and directors of the nonprofit corporation or entity operating or controlling a hospital or nursing home and is in accordance with law. The attorney general shall consider a number of factors set forth in N.D.C.C. § 10-33-145 in reviewing and evaluating a proposed agreement or transaction.

The attorney general shall notify, in writing, the nonprofit corporation or entity operating or controlling a hospital or nursing home of the attorney general's decision to approve, deny, or take any other action on the proposed agreement or transaction, within ninety days of receipt of the written notice of the proposed agreement or transaction.

N.D.C.C. § 10-33-147 gives the attorney general authority to bring proceedings in the district court to secure compliance with sections 10-33-144 through 10-33-148, including an action to enjoin the consummation of the proposed transaction or agreement or to secure any other relief available under the law.

Unlawful Sales or Advertising Practices

The use of unlawful sales and advertising practices is governed by the North Dakota Century Code, Chapter 51-15. A copy of the law is available from the Secretary of State's office or the Attorney General's office upon request. Contact information for the Secretary of State's office is listed on the title page of this guide. While the following information is a guide, it is not intended to be a replacement for counsel provided by legal, accounting, and management professionals.

What is an Advertisement?

An *advertisement* is any attempt to persuade a person to enter into an obligation or acquire merchandise. The attempt can be an oral or written, direct or indirect publication, distribution, solicitation or circulation of the advertisement.

What is a Sale?

A *sale* is any charitable solicitation or any sale, offer for sale or attempt to sell any merchandise for any consideration. Therefore, a purchase does not have to occur for a sale or an unlawful practice to occur; an offer or attempt to sell the merchandise constitutes a sale.

Unlawful Sales and Advertising Practices

The act, use, or employment by any person of any deceptive act or practice, fraud, false pretense, false promise, or misrepresentation, with the intent that others rely thereon in connection with the sale or advertisement of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is declared to be an unlawful practice. The act, use, or employment by any person of any act or practice, in connection with the sale or advertisement of any merchandise, which is unconscionable or which causes or is likely to cause substantial injury to a person which is not reasonably avoidable by the injured person and not outweighed by countervailing benefits to consumers or to competition, is declared to be an unlawful practice. Unlawful sales and advertising practices include:

1. Use of check endorsements for advertising obligations (N.D.C.C. § 51-15-02.1) – Any check sent through the mail or by any other means that requires the recipient to advertise with the sender of the check upon endorsement of said check.
2. Solicitation of payment by bill, invoice or statement of account due (N.D.C.C. § 51-15-02.2) – A bill, invoice or statement of account due, or a writing that could reasonably be interpreted as such, that is sent, delivered or transmitted by a person to solicit payment of money by another person for goods not yet ordered or for services not yet performed and not yet ordered.
3. Facilitating and assisting (N.D.C.C. § 51-15-02.3) – It is unlawful to provide assistance or support to any person engaged in any act or practice in violation of the consumer fraud law when the person providing assistance or support knows or consciously avoids knowing that the other person is engaged in a violation of the consumer fraud law.

The media is excluded from state law related to unlawful sales or advertising practices if the owner, publisher or operator of a newspaper, magazine, other publication of printed matter, or radio or television station has no knowledge of the intent, design or purpose of the advertiser.

Powers of the Attorney General for Suspected Violations

If the attorney general believes that a person has engaged or is engaging in an unlawful sales or advertising practice or if the attorney general believes it would be in public interest to investigate the possibility of an unlawful sales or advertising practice, in order to assist with investigation, the attorney general may:

1. Require that the person file a written statement or report detailing the facts and circumstances concerning the sale or advertisement of merchandise by that person, as well as any other information that the attorney general finds necessary.
2. Examine under oath any person in connection with the sale or advertisement of any merchandise.
3. Examine any merchandise or sample thereof, record, book, document, account or paper as necessary.
4. If ordered by a district court, impound any merchandise or sample thereof, record, book, document, account, or paper related to that practice and retain the same in the attorney general's possession until the conclusion of all proceedings.
5. The attorney general may also issue subpoenas, administer an oath or affirmation, conduct hearings to assist with any investigation or inquiry and prescribe forms and adopt rules as may be necessary. If any person fails or refuses to file any statement or report, or obey any subpoena issued by the attorney general, the attorney general may request an order from district court:
 - a. Granting equal relief and restraining the sale or advertisement of any merchandise by such persons.
 - b. Vacating, annulling, or suspending the charter of a for-profit or nonprofit corporation or limited liability company created by or under the laws of this state or revoking or suspending the certificate of authority to do business in this state for a foreign corporation or limited liability company or revoking or suspending any other licenses, permits, or certificates issued pursuant to law to such person which are used to further the allegedly unlawful practice.
 - c. Granting other relief as may be required until the person files the statement or obeys the subpoena.

Remedies and Penalties Authorized by the Attorney General

If the attorney general believes that a person has engaged or is engaging in an unlawful sales or advertising practice, the attorney general may resolve the issue by utilizing the following remedies and/or penalties:

Assurance of discontinuance – The person alleged to be participating in the unlawful sales or advertising practice may file a written assurance of discontinuance with the district court of the county in which the alleged violator resides or has as a principal place of business or in Burleigh County. The assurance of discontinuance is subject to the approval of the filing county. The assurance of discontinuance signifies that the person will discontinue the use of the sales or advertising practice that is in question, but is not considered an admission of a violation. However, if a person fails to comply with an approved assurance of discontinuance, the person may be found in contempt of court and sanctioned for violations of N.D.C.C. ch. 51-15.

Cease and desist order –The attorney general may issue a cease and desist order if the attorney general deems necessary or appropriate in the public interest, including if a person fails or refuses to file a statement or report, or to obey a subpoena issued by the attorney general.

Civil penalties – If a person is found to have violated a cease and desist order, the attorney general may order and collect a civil penalty of no more than \$1,000 for each violation.

Remedies and Penalties by Court Order

If a person is found guilty of an unlawful sales or advertising practice, the court may issue an order for the following remedies and/or penalties:

Injunction – An injunction, which would prohibit the person from continuing the unlawful practice.

Recovery – The court may issue an order to prevent the use of the unlawful practice by the violating person and also allow a person who was harmed by the unlawful practice to recover any money or property that may have been acquired through the use of the unlawful practice.

Receiver – If the court finds through evidence that a person is about to conceal assets or oneself or leave the state, it may issue an order appointing a receiver of the person's assets. If a receiver is appointed by the court, the receiver shall take possession of all property derived by means of any practice declared to be unlawful. This includes any property that may be commingled with other property if the separation of the assets cannot be determined. The receiver may be ordered by the court to sell, convey or assign the property and hold and dispose of the proceeds. Any person who submits to the court satisfactory proof that he or she has suffered damages as a result of the unlawful practices may receive a distribution of the assets if the person experienced out-of-pocket losses.

Fees and costs – The attorney general shall be awarded reasonable attorney's fees, investigation fees, costs and expenses related to any investigation and action related to unlawful sales and advertising practices.

Civil penalties – A civil penalty not to exceed \$5,000 for each violation related to unlawful sales and advertising practices may be imposed against the violating party. The civil penalty is in addition to other remedies provided by state law.

Any person may seek relief from another person who has acquired money or property by any unlawful sales or advertising practice. However, no person may seek relief against a person who facilitates or assists another person who is in violation of state law related to unlawful sales and advertising practices. Also, if the court finds that the defendant knowingly committed the violation, the person seeking relief may be awarded three times the actual damages and the court must also order that the person seeking relief recover the necessary costs, disbursements and actual reasonable attorney's fees that were incurred in the action.

Telephone Solicitations

Telephone solicitations are governed by the North Dakota Century Code, Chapter 51-28. A copy of the law is available from the Secretary of State's office or Attorney General's office upon request. Contact information for the Secretary of State's office is listed on the title page of this guide. While the following information is a guide, it is not intended to be a replacement for counsel provided by legal, accounting, and management professionals.

What is a Telephone Solicitation?

A *telephone solicitation* is any voice, text or other electronic communication over a telephone line for the solicitation of charitable contributions or the purchase, rental or investment of property, goods, services or merchandise. A telephone solicitation may be made by a live operator, through the use of an automatic dialing-announcing device or by other means. An *automatic dialing-announcing device* selects and dials telephone numbers. The device may function independently or combined with other equipment to broadcast a prerecorded or synthesized voice message to the telephone number called.

Telephone solicitations do not include communications:

1. To a subscriber who has given prior written request, consent, invitation or permission. A *subscriber* is a person who has subscribed to a residential telephone line or the other persons living or residing with the subscribing person.
2. By or on behalf of any person with whom the subscriber has an established personal or business relationship.
3. By or on behalf of a charitable organization that is exempt from federal income taxation under section 501 of the Internal Revenue Code, but only if the following applies:
 - a. The telephone call is made by a volunteer or employee of the charitable organization; and
 - b. The person making the telephone call immediately discloses the following information upon contact with the consumer:
 - i. The person's true first and last name; and
 - ii. The name, address and telephone number of the charitable organization.
4. By or on behalf of any person whose exclusive purpose is to poll or solicit the expression of ideas, opinions or votes, unless the communication is made in a prohibited manner for automatic dialing-announcing devices.
5. By a person who does not intend to complete, and does not complete, the sales presentation during the telephone call, but will at a later in-person meeting between the caller and subscriber.
6. By or on behalf of a political party, candidate or other group with a political purpose.

Use of Prerecorded or Synthesized Voice Messages (N.D.C.C. § 51-28-02)

A caller may not use or connect to a telephone line an automatic dialing-announcing device or deliver a prerecorded or synthesized voice message to a subscriber unless the subscriber has knowingly requested, consented to, permitted, or authorized receipt of the message or the message is immediately preceded by a live operator who obtains the subscriber's consent before the message is delivered. Prohibited prerecorded messages do not include messages:

1. From a public safety agency notifying a person of an emergency;

2. From a school district to a student, a parent or an employee;
3. To a subscriber with whom the caller has a current business relationship; or
4. Advising an employee of a work schedule.

**Message Requirements
(N.D.C.C. § 51-28-03)**

If a telephone solicitation will have a message conveyed to the subscriber prior to speaking with a live operator, the following must be disclosed at the beginning of the message:

1. The name of the business, firm, organization, association, partnership or entity for which the message is being made;
2. The purpose of the message;
3. The goods or services the message is promoting; and
4. The fact that the message intends to solicit payment or commitment of funds, if applicable.

**Requirements on Automatic Dialing-Announcing Devices
(N.D.C.C. § 51-28-04)**

A caller may not use an automatic dialing-announcing device unless the device will disconnect within ten (10) seconds after the subscriber terminates the telephone call. An automatic dialing-announcing device that uses a random or sequential number generator may not be used unless the following telephone numbers are excluded from calls:

1. Emergency telephone numbers, including 911, of any hospital, medical physician, health care facility, ambulance or emergency medical provider, fire protection facility or law enforcement agency.
2. Any guest room or patient room of a hospital, health care facility, elderly care home or similar establishment.
3. A paging service, a cellular telephone service, a specialized mobile radio service or any service for which the party called is charged for the call.
4. Telephone numbers maintained on the Do-Not-Call list.

Requirements for Telephone Solicitations

Telephone solicitations are limited and restricted as follows:

1. Time of Day Limit (N.D.C.C. § 51-28-05) – No automatic dialing-announcing or telephone solicitations may be made prior to 8:00 a.m. or after 9:00 p.m. based on the subscriber's time zone.
2. Prohibited Telephone Solicitations (N.D.C.C. § 51-28-06) – Telephone solicitations may not be made to a subscriber who has been on the Do-Not-Call list for at least thirty-one (31) days.
3. Identification by Caller (N.D.C.C. § 51-28-07) – A telephone solicitation caller must state at the beginning of the call his or her first and last name, phone number, city and state and the name of the business on whose behalf the telephone solicitation is made.

4. Interference with Caller Identification (N.D.C.C. § 51-28-08) – A telephone solicitation caller may not use any method to block the subscriber's use of a caller identification service.

Do-Not-Call List (N.D.C.C. § 51-28-09)

A list of subscribers who do not want to receive telephone solicitations is maintained by the attorney general. This list is known as the Do-Not-Call List. If a subscriber wants his or her telephone number to be added to the Do-Not-Call List, the subscriber must provide notice to the attorney general or the attorney general's agent by mail, telephone or electronic means. A person may register his or her phone number with the attorney general or with the National Do Not Call Registry. Both lists are pooled so a person only needs to register on one list. If a subscriber has more than one telephone number, each number must be added to the Do-Not-Call List. A subscriber will remain on the Do-Not-Call List indefinitely unless revoked by the subscriber.

Persons who make telephone solicitations are required to search the Do-Not-Call List at least once every thirty-one (31) days and remove any telephone numbers from their call list that appear on the Do-Not-Call List. An annual fee may be required depending on the number of area codes requested to be searched. More information regarding the Do-Not-Call List is available on the National Do Not Call Registry website at www.donotcall.gov.

Private Enforcement (N.D.C.C. § 51-28-11)

A person who receives an unlawful telephone solicitation or message may bring an action against the violating party. Damages in an amount not to exceed \$2,000 for each violation or the actual amount of damages incurred, whichever is greater, may be awarded to the plaintiff by the court, along with the plaintiff's costs, expenses and reasonable attorney fees.

Powers of the Attorney General for Suspected Violations

If the attorney general believes that a person has engaged in or is engaging in an unlawful telephone solicitation, the attorney general may:

1. Issue a cease and desist order regarding the telephone solicitation.
2. Issue an order for a civil penalty in an amount no more than \$2,000 for each violation.
3. Assess an award of costs, including reasonable attorney's fees, investigation fees, costs and expenses of any investigation and action against the violating person.

Remedies and Penalties by Court Order

If the court finds that a person is guilty of practicing an unlawful telephone solicitation, the court may order the following relief to the attorney general:

1. A civil penalty award in an amount not to exceed \$2,000 per violation.
2. An award of reasonable attorney's fees, investigation fees, costs and expenses of any investigation and action.

Legislative Lobbying

North Dakota Century Code, Chapter 54-05.1 governs lobbying of the legislature and the governor for the passage, amendment or defeat of any proposed legislation. A copy of the law and forms are available under the Lobbyists section on the secretary of state's website at sos.nd.gov. This information is also available from the secretary of state's office upon request for a fee. Contact information for the secretary of state's office is listed on the title page of this guide.

Who is Considered a Lobbyist? (N.D.C.C. § 54-05.1-02)

A lobbyist is a person who, directly or indirectly, attempts to:

1. Secure the passage, amendment or defeat of any legislation by the legislative assembly or the approval or veto of any legislation by the governor of the state.
2. Influence decisions made by the legislative management or by an interim committee of the legislative management.

A person may not participate in lobbyist activities in North Dakota unless he or she is first registered with the North Dakota secretary of state. The law exempts the following persons from the registration requirement.

1. A legislator.
2. A private citizen appearing on the citizen's own behalf.
3. An employee, officer, board member, volunteer or agent of the state or its political subdivisions whether elected or appointed and whether or not compensated, who is acting in that person's official capacity.
4. An individual invited by the chairman of the legislative management, an interim committee of the legislative management or a standing committee of the legislative assembly to appear before the committee for the purpose of providing information.
5. An individual who appears before a legislative committee for the sole purpose of presenting testimony on behalf of a trade or professional organization or a business or industry if the individual is introduced to the committee by the registered lobbyist for the trade or professional organization or the business or industry.

Lobbyist Registration Procedure (N.D.C.C. § 54-05.1-03)

To register as a lobbyist in North Dakota, a person must:

1. File a [Lobbyist Registration \(SFN 11106\)](#) with the secretary of state, which includes the following information:
 - a. Registrant's full name;
 - b. Registrant's business address;
 - c. Name and address of any person (business, association, group, organization, club) who the registrant will appear on his or her behalf;
 - d. Name and address of any person (business, association, group, organization, club) in whose interest the registrant appears or works;
 - e. Duration of the employment or appearances; and

- f. The person or entity by which the registrant is paid or is to be paid.
2. File a written authorization to act as a lobbyist, which can be filed by facsimile. This authorization must be signed by the official of the corporation, limited liability company, association, group or organization employing the lobbyist.
3. Receive a certificate of registration from the secretary of state.
4. Receive a lobbyist identification badge from the secretary of state. A lobbyist is required to wear this badge whenever he or she is engaged in lobbyist activities on the capitol grounds. In place of the official badge, a lobbyist may also wear a duplicate badge that contains the name of the lobbyist and any of the following:
 - a. The word 'lobbyist';
 - b. The lobbyist's registration number; or
 - c. The lobbyist's organization name.

The characters on the duplicate badge cannot be any smaller than one-quarter inch [6.35 millimeters].

In the event a lobbyist's official badge is lost or destroyed, the lobbyist may request a replacement badge from the secretary of state. The fee for a replacement badge is \$10.

Registration fee – The registration fee for the lobbyist and the first person (business, association, group, organization, club) represented by the lobbyist is \$25. An additional fee of \$15 is required for each additional person (business, association, group, organization, club) represented by the lobbyist.

Registration period – A lobbyist's registration commences on July 1st and expires on June 30th the following calendar year unless the registrant requests an earlier expiration date.

Lobbyist Expenditure Report (N.D.C.C. § 54-05.1-03)

Each year a person is registered as a lobbyist, he or she must file a [Lobbyist Expenditure Report \(SFN 07654\)](#) with the secretary of state. The report must include:

1. A statement regarding each expenditure of \$60 or more spent on any single occasion on any individual, including the spouse or other family member of a member of the legislative assembly or the governor, in order to perform the lobbyist's work. If no such expenditures were made during the report period, then a statement that no reportable expenditures were made during that report period.
2. The statement of each expenditure must include:
 - a. Description of the type of the expenditure;
 - b. Amount of the expenditure;
 - c. Date of the expenditure; and
 - d. Name of the recipient of the expenditure.

Filing deadline – The report filing deadline is on or before August 1st following the expiration of the lobbyist registration.

Filing fee and penalties – There is no filing fee for the Lobbyist Expenditure Report provided that the report is filed after June 30th and on or before August 1st of the same year. Penalties are assessed as follows when a Lobbyist Expenditure Report is not filed on time:

1. \$25 late fee if filed within sixty (60) days after August 1st.
2. \$50 late fee if filed more than sixty (60) days after August 1st.
3. In addition to the \$50 late fee for reports filed more than sixty (60) days after August 1st, any lobbyist who fails to file the Lobbyist Expenditure Report by October 1st will have his or her registration automatically revoked. However, if the lobbyist provided to the secretary of state an explanation, in writing, justifying his or her failure to file the report on time, the lobbyist's certificate cannot be revoked. The lobbyist's registration may be reinstated only if the lobbyist files the outstanding Lobbyist Expenditure Report and pays any outstanding late fee.

Lobbyist Information is Public Information

A list of lobbyists registered with the secretary of state is available to the public and can be found under the Lobbyists section on the secretary of state's website at sos.nd.gov. A report detailing the total amount of expenditures reported by registered lobbyists is available upon request for a fee.

Penalties for Lobbyist Violations (N.D.C.C. § 54-05.1-07)

Any person who violates state law related to lobbyists is guilty of a class B misdemeanor. However, a violation of performing lobbyist activities without registration as a lobbyist with the secretary of state is an infraction of state law.

In the event a lobbyist is convicted of a violation of state law related to lobbyists, his or her certificate of registration will be revoked.

Appendix D

Lobbyist Registration (SFN 11106)



LOBBYIST REGISTRATION

SECRETARY OF STATE

SFN 11106 (08-2017)

For Office Use Only

ID Number:	
WO Number:	
Filed:	By:
Badge Number:	

FEE:

\$25.00 registration and one entity

Additional \$15.00 for each subsequent entity

For reference, see North Dakota Century Code, Chapter 54-05.1.

SEE INSTRUCTIONS FOR FILING AND MAILING INFORMATION.

SECTION A: LOBBYIST INFORMATION

Name of lobbyist (last, first)		Social security number	
Business address	City	State	ZIP code
Email Address		Business telephone number	

SECTION B: PERSON(S) OR ENTITY(IES) ON WHOSE BEHALF THE LOBBYIST WILL ATTEMPT TO INFLUENCE LEGISLATION

1.	Name of person or entity represented by lobbyist			
	Business address	City	State	ZIP code
	Name (if different than person or entity) by whom the lobbyist will be paid		Address	
2.	Name of person or entity represented by lobbyist			
	Business address	City	State	ZIP code
	Name (if different than person or entity) by whom the lobbyist will be paid		Address	
3.	Name of person or entity represented by lobbyist			
	Business address	City	State	ZIP code
	Name (if different than person or entity) by whom the lobbyist will be paid		Address	
4.	Name of person or entity represented by lobbyist			
	Business address	City	State	ZIP code
	Name (if different than person or entity) by whom the lobbyist will be paid		Address	

As a condition to the granting of a lobbyist registration, I agree to file on or before August 1 of each year, a detailed report on forms provided by the Secretary of State, of each expenditure of sixty dollars or more expended on any single occasion. I understand that even if I have no expenditures to report, I must still file a report indicating that no reportable expenditures were made during the reporting period. I understand that if I make a false statement in this document, I may be subject to criminal penalties.

Lobbyist signature	Date
--------------------	------

(additional entities can be listed on page 2)

5.

Name of person or entity represented by lobbyist

Business address

City

State

ZIP code

Name (if different than person or entity) by whom the lobbyist will be paid

Address

6.

Name of person or entity represented by lobbyist

Business address

City

State

ZIP code

Name (if different than person or entity) by whom the lobbyist will be paid

Address

7.

Name of person or entity represented by lobbyist

Business address

City

State

ZIP code

Name (if different than person or entity) by whom the lobbyist will be paid

Address

8.

Name of person or entity represented by lobbyist

Business address

City

State

ZIP code

Name (if different than person or entity) by whom the lobbyist will be paid

Address

9.

Name of person or entity represented by lobbyist

Business address

City

State

ZIP code

Name (if different than person or entity) by whom the lobbyist will be paid

Address

10.

Name of person or entity represented by lobbyist

Business address

City

State

ZIP code

Name (if different than person or entity) by whom the lobbyist will be paid

Address

FAX FILING: A registration and Credit Card Payment Authorization may be faxed to (701) 328-1690.

MAILING INSTRUCTIONS: Send completed registration to:

Secretary of State
State of North Dakota
600 E Boulevard Ave Dept 108
Bismarck ND 58505-0500

LOBBYIST REGISTRATION

An individual must register as a lobbyist with the Secretary of State before that individual in any manner, directly or indirectly:

1. Attempts to secure the passage, amendment, or defeat of any legislation by the legislative assembly or the approval or veto of any legislation by the governor of the state; or
2. Attempts to influence decisions made by the legislative council or by an interim committee of the legislative council.

Registration is not required if the lobbyist individual is:

1. A legislator;
2. A private citizen appearing on his own behalf;
3. An employee, officer, board member, volunteer, or agent of the state or its political subdivisions whether elected or appointed and whether or not compensated, who is acting in that person's official capacity;
4. Invited by the chairman of the legislative council, an interim committee of the legislative council, or a standing committee of the legislative assembly to appear before the council, interim committee, or standing committee for the purpose of providing information; or
5. An individual who appears before a legislative committee for the sole purpose of presenting testimony on behalf of a trade, or professional organization, or a business or industry if the individual is introduced to the committee by the registered lobbyist for the trade, or professional organization or the business, or industry.

Submit the filing fee with the registration.

FILING FEE:

\$25 if lobbying on behalf of one individual or entity as listed in Section B
\$15 for each subsequent individual or entity as listed in Section B

Checks must be payable to "Secretary of State" and must be for U.S. negotiable funds. Payment may also be made by credit card using Visa, MasterCard, Discover, or American Express.

AUTHORIZATION REQUIRED: The registration must be accompanied by a Lobbyist Authorization from each person or entity listed in Section B. The Lobbyist Authorization may be submitted in the form of a letter signed by the person or entity listed in Section B or a form is available from the Secretary of State's website at sos.nd.gov.

The following instructions correspond to the lettered sections on the form:

SECTION A: For the registering lobbyist, provide the name, social security number, business address, email address (if available), and business telephone number.

Privacy: In accordance with the provisions of N.D.C.C., Chapter 44-04, the disclosure of a social security number or email address is voluntary. Failure to provide them will not result in the rejection of the registration. The number and email address are not disclosed to the public; they are used by the Secretary of State to accurately maintain lobbyist records.

SECTION B: For each person or entity on whose behalf the lobbyist will attempt to influence legislation, provide:

1. The name of the person or entity represented by the lobbyist;
2. The business address of the person or entity; and
3. The name, if different than the person or entity, by whom the lobbyist will be paid.

Continue the listing of represented persons or entities on page 2.

The registration must be signed and dated by the individual registering to be a lobbyist.

Appendix E

Lobbyist Authorization (SFN 60866)

**LOBBYIST AUTHORIZATION**

SECRETARY OF STATE

SFN 60866 (05-2016)

For Office Use Only

ID Number:	
WO Number:	
Filed:	By:

FILING FEE:

No filing fee if Lobbyist Authorization is submitted with the Lobbyist Registration

\$15.00 for each authorization filed **after** Lobbyist Registration**Lobbyist Information**

Name			
Address	City	State	ZIP code

Authorizing Person or Entity Information

Name			
Address	City	State	ZIP code
Email Address		Telephone number	
Name (if different than authorizing person or entity) by whom the lobbyist will be paid			

Representation Time Period

Start date	End date
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By signing this document, I hereby authorize the above-named lobbyist to represent the above-named person or entity as a lobbyist for the registration time period indicated above for the purposes of influencing legislation as defined in the North Dakota Century Code, Section 54-05.1-02(1).

Signature	Title	Date
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FAX FILING: A Lobbyist Authorization and Credit Card Payment Authorization may be faxed to (701) 328-1690.**MAILING INSTRUCTIONS:** Send completed authorization to:

Secretary of State
State of North Dakota
600 E Boulevard Ave Dept 108
Bismarck ND 58505-0500

Telephone: (701) 328-3665

Toll-free: (800) 352-0867 (ext. 328-3665)

Fax: (701) 328-1690

Website: sos.nd.gov

SFN 51478 (02-2016)

Amount

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[illegible]

*Three-digit (Visa, MasterCard, or Discover) or four-digit (American Express) security code

Employer's Guide to Unemployment Insurance in North Dakota

Purpose of Unemployment Insurance

The Unemployment Insurance Program provides temporary income for persons who have lost their jobs through no fault of their own while they search for new jobs.

The intent of the program is not only to protect an unemployed worker's financial health, but also to help keep main street businesses and a community's economy stable during periods of high unemployment.

Each person's benefit amount depends on his/her past wages.

Employer Reporting Requirements

An employer must file a [Report to Determine Liability](#) within 20 days after first employing workers.

Liable employers must file [Employer's Contribution and Wage Reports](#) quarterly. Reports can be filed electronically via our **UI EASY** online filing feature. Go to www.jobsnd.com for information on **UI EASY**. Reports must be completed and returned with the tax due by the end of the month following each calendar quarter. Reports and payments not submitted on time are subject to interest and penalty charges. Employers with 25 or more employees must file electronically. Effective with the first quarter filing in 2018, **all** employers must report electronically.

Tax payments can be made through electronic funds transfer (EFT) via ACH Debit in **UI EASY**. ACH credit is also available (See [Electronic Funds Transfer](#) on our web page or contact our EFT Coordinator. Payers making payments on behalf of another must make the payments electronically. Effective with the first quarter filing in 2018, **all** employers must pay their quarterly contributions electronically.

Which Employers Must Pay the Tax?

- Any employer with one or more workers during 20 different weeks in a calendar year or who has paid \$1,500 or more in wages in a calendar quarter.
- Any employer who acquires the business of another liable employer.
- Any employer employing workers in North Dakota who is liable under the **Federal Unemployment Tax Act (FUTA)**.
- Political subdivisions and Indian tribes or business enterprises wholly owned by Indian tribes become liable immediately upon employing any non-excluded workers.
- Nonprofit organizations with 501(c)(3) income tax exemptions are liable if they employ four or more workers during 20 different weeks in a calendar year.
- Employers of agricultural labor are covered if they pay \$20,000 or more in wages in a calendar quarter or employ ten or more workers in 20 different weeks in a calendar year.
- Employers of domestic labor in a private home, local college club, or local chapter of a college fraternity or sorority are covered if they pay \$1,000 or more in wages in a calendar quarter.

Services Excluded From Coverage

Some types of employment are excluded from unemployment insurance tax. The most notable exclusion is for service performed for a son, daughter, or spouse, or services performed by a child under age 18 for a parent while living in the parents' home.

This exclusion does not apply to corporations or certain limited liability companies (LLC). It applies to partnerships only if the worker has an exempting relationship with each partner.

Corporations and Limited Liability Companies

Corporate officers who perform services for the corporation and receive remuneration for that service are considered employees. The same applies to LLC managers if: 1) the LLC is treated as a corporation for federal income taxation or, 2) the manager(s) is not a member. Employers of certain corporate officers and certain covered LLC managers with 25% or more ownership interest may, with the concurrence of the officer or manager, apply to exclude the officer's or LLC manager's services from employment. The application to do so must be filed within 60 days of formation of the corporation/LLC, or in January of the year in which the exclusion is to begin.

Your Tax Rate

When employers become liable for unemployment insurance they are classified as "new employers" and are assigned a new employer rate. Tax rates are re-determined for each calendar year based on the employer's history as of the preceding October.

If, prior to October, "non-construction" employers have at least six quarters of coverage and "construction" employers have at least ten quarters of coverage, they are classified as "experience rated employers" beginning the following calendar year; otherwise, they are classified as "new employers." Experience-rated employers are assigned rates based on their record of unemployment insurance taxes paid and benefits charged.

The rates vary each year depending on the employer's individual history and the condition of the state's unemployment compensation trust fund.

Employers who acquire an existing business may apply for the experience record of the previous owner. If the experience record is transferred, the new owner is also held accountable for any benefits paid to the previous owner's workers. In certain cases, such as those where common ownership, management or control exist, the transfer of the experience record may be mandatory.

The maximum amount of each worker's wages subject to taxation is determined yearly and equals 70% of the calculated statewide average annual payroll.

Some entities, such as government, tribal or 501(c)(3) organizations, have the option of financing benefits by reimbursement rather than the payment of taxes. Under this method, the employer reimburses the trust fund each quarter for all benefits paid to the employer's former workers. Employers selecting this option should be aware that the waiving of charges that applies under certain conditions to tax-rated employers does not apply to reimbursing employers.

Responding to Claim Notices

An unemployed worker may file a claim for benefits by filing from our website by clicking on **UI ICE** or calling 701-328-4995. The qualifying claimant's most recent employer and all employers who paid wages on which the claim is based (base period employer), are notified that a claim has been filed. If the claimant has been separated from your employment for any reason other than lack of work, **return the notice with full details about the separation to protect your appeal rights.**

If you are the claimant's last employer, you will be notified whether or not the reasons for separation from your employment are disqualifying. If you are the claimant's base period employer, you will be notified whether or not your account will be charged for the benefits paid to former employees. If any benefits are charged to your account for any calendar quarter, you will receive a notice detailing those charges.

Contact Information

Where to Get Forms and Assistance

Check our website: www.jobsnd.com

Call: 701-328-2814 ° TTY: Relay ND 800-366-6888

Write: Job Service North Dakota

Unemployment Insurance

Tax and Field Services

P.O. Box 5507

Bismarck, ND 58506-5507

Appendix F

Report to Determine Liability (SFN 41216)



REPORT TO DETERMINE LIABILITY

JOB SERVICE NORTH DAKOTA
UNEMPLOYMENT INSURANCE
SFN 41216 (R. 7-2014)

Job Service Use

EAN		
ST		
RE		
BY		FR
RA	YR	-1
-2	Q	STF
SIC		AUX
NAIC		AUX
LOC		OWN

UI TAX AND FIELD SERVICES
PO BOX 5507

BISMARCK NORTH DAKOTA 58506- 5507
701-328-2814 FAX: 701-328-1882 TTY RELAY ND 800-366-6888

Web link to: [NEW BUSINESS REGISTRATIONS IN NORTH DAKOTA](#)

1. Business Name					3. Telephone Number				
2. Corporate or Legal Name					4. Federal Employer ID (FEIN)				
5. Mail Address (Number and Street or P.O. Box)			City	State	ZIP Code + 4		Internet Address (optional)		
6. Street Address (Number and Street)			City	State	ZIP Code + 4		E-mail Address (optional)		
7. Is (Are) any other business(es) being operated in North Dakota by this ownership? <input type="checkbox"/> Yes <input type="checkbox"/> No				If yes, Name of Business(es)					
8. Type of Ownership									
<input type="checkbox"/> Individual <input type="checkbox"/> Partnership (Indicate type: general, LP, LLP, etc.) _____									
<input type="checkbox"/> Corporation Click to obtain SFN 18411 <input type="checkbox"/> Limited Liability Company (LLC) (Indicate treatment for federal income tax reporting):									
if you wish to exempt Corp Officer services <input type="checkbox"/> Disregarded Entity <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> S-Corp <input type="checkbox"/> Don't Know									
<input type="checkbox"/> Nonprofit Corporation <input type="checkbox"/> Cooperative									
<input type="checkbox"/> Government <input type="checkbox"/> Other (Describe) _____									
<input type="checkbox"/> Indian Tribe or Wholly-Owned Entity of an Indian Tribe									
In what state was your business originally incorporated/registered?							Date		

9. List the owner(s) and all partners or corporate officers. Also, any corporate director or employee having a 20 percent or more ownership interest. Attach separate sheet if necessary.

Name	Home Address	Title	Social Security Number*	Percent Owner

* In compliance with the Privacy Act of 1974, a Social Security Number is mandatory on this form pursuant to 20 CFR 666.150 and/or North Dakota Century Code 52-02-02. This number is used by Job Service North Dakota for identification, federal and state tax, program eligibility purposes and program performance accountability.

10. Have you employed workers in North Dakota? <input type="checkbox"/> Yes <input type="checkbox"/> No	If yes, date you first employed workers in North Dakota
--	---

If you are a government entity, Indian tribe, or wholly-owned entity of an Indian tribe, go to Question 17.

11. Did you acquire any part of the ND assets or business of another employer or change your business status/structure in any way? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, complete Schedule B.	
12. Are you liable for federal unemployment taxes (FUTA)? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know If yes, go to Question 18. You will be covered under North Dakota law as of the first day you employ workers in this state.	

13. Are you a nonprofit organization exempt from income taxes under Section 501(c)(3), IRS Code?

☐ Yes ☐ No - **Go to #14** ☐ Applied For - **Go to #14**

If yes, complete this section and submit a copy of your exemption letter from the IRS to Job Service North Dakota. You need not complete sections 14 and 15.

As a nonprofit organization, have you employed four or more persons during 20 weeks of any calendar year in any state?

☐ Yes ☐ No - **Go to #16** If yes, date the 20th week was first reached. _____

When answering Questions 14 and 15, include as employees all part-time workers and non-exempt (see Employer's Guide) corporate officers and limited liability company managers. Do not include spouse, children under 18 who live at home, or parents of an individual owner - this does not apply to corporations or limited liability companies. This exclusion applies to partnerships only if the worker has an exempting relationship with each partner.

14. Enter the amount of wages you **have paid** in North Dakota (do not estimate or include wages earned but not paid):

	Jan. 1 to March 31	April 1 to June 30	July 1 to Sept. 30	Oct. 1 to Dec. 31
Current Year	\$	\$	\$	\$
Preceding Year	\$	\$	\$	\$
Prior Year	\$	\$	\$	\$
Year	\$	\$	\$	\$

15. During the 20 weeks of any calendar year, have you employed: If yes, date the 20th week was first reached.

a. One or more persons in **general** employment? ☐ Yes ☐ No _____

b. Ten or more persons in **agricultural** employment? ☐ Yes ☐ No _____

16. If it is determined that you are not now liable for coverage, do you want to become covered voluntarily? ☐ Yes ☐ No

See NDCC 52-05-03(2) for voluntary coverage information.

Voluntary coverage is not available if you answered no to question #10

17. Complete this section only if you are a governmental entity, Indian tribe or wholly-owned entity of an Indian tribe, or a 501(c)(3) tax exempt organization and answered yes to either Question 13 or 16.

Select one of the following benefit financing options: (see NDCC 52-04-18 for benefit financing methods)

☐ Reimbursement of benefit payments attributable to employment with your organization.

☐ Payment of taxes on your quarterly taxable payroll at the rate applicable for new employers.

☐ Advanced reimbursements at a percent of your quarterly total payroll to be redetermined annually.

Will default to Payment of Taxes: 1) if not completed and/or 2) if you have not provided an IRS exemption letter.

18. Have any individuals you do not consider employees performed services for you in North Dakota?

☐ Yes ☐ No

If yes, give reasons for excluding them and indicate number of persons involved.

19. Does any part of your business activity include the provision of "temporary" or "leased" workers to a client company? ☐ Yes ☐ No

20. Give a specific description of your business activity in North Dakota.

Enter on separate lines the principal product or activities of your firm. Following each item, list the percentage of sales value or receipts received from the product or activity; i.e., retail men's clothing, electrical construction-residential, or long haul trucking-refrigerated van.

	%
	%

	%
	%

21. Business Locations: Enter the North Dakota addresses from which your employees work and indicate if the location is permanent or temporary. If you do not maintain an office in North Dakota, enter the employee's address.

Address	City	State	ZIP Code	Telephone	Permanent	Temporary

Remarks:

22.

Name of Authorized Representative	Title	Telephone Number	Fax Number
Name of Individual Completing Form	Title	Telephone Number	Date

☐

I certify the information on SFN 41216, Report to Determine Liability, is true and accurate.

REPORT TO DETERMINE LIABILITY
SCHEDULE B - SUCCESSORSHIP QUESTIONNAIRE

Complete Schedule B only if you answered "yes" to question 11 on form SFN 41216, Report to Determine Liability

Successorship Reporting Requirement. If you acquired all or part of the organization, business, trade, or assets of another employer and will continue essentially the same business activity, you must provide the following information. If you made multiple acquisitions, you must file a separate Schedule B for each acquisition. Submit the completed Schedule B(s) along with Form SFN 41216, Report to Determine Liability, to Job Service North Dakota.

PART 1: CURRENT/NEW OWNER INFORMATION

Name	
UI Account Number	Federal Employer Identification Number

PART 2: FORMER OWNER INFORMATION

Former Owner's Name (required)	Former Owner's UI Number or FEIN, if known		
Corporate Name or DBA		Area Code and Telephone Number	
Current Street Address (not a P.O. Box)	City	State	ZIP Code

PART 3: ACQUISITION INFORMATION

1. Did you acquire all, part or none of the former owner's assets?	<input type="checkbox"/> All <input type="checkbox"/> Part <input type="checkbox"/> None	Percent Acquired	Date Acquired
2. Did you acquire all, part or none of the former owner's workforce?	<input type="checkbox"/> All <input type="checkbox"/> Part <input type="checkbox"/> None	Percent Acquired	Date Acquired
3. Did you acquire all, part or none of the former owner's North Dakota trade (customers/accounts)?	<input type="checkbox"/> All <input type="checkbox"/> Part <input type="checkbox"/> None	Percent Acquired	Date Acquired
4. Did you acquire all, part or none of the former owner's North Dakota business (products/services)?	<input type="checkbox"/> All <input type="checkbox"/> Part <input type="checkbox"/> None	Percent Acquired	Date Acquired
5. Was the North Dakota business being operated at the time of the acquisition? If no, enter the date it was closed by the former owner.	<input type="checkbox"/> Yes <input type="checkbox"/> No	Date (MM, DD, YYYY)	
6. Are you continuing the North Dakota business you acquired?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
7. Is your North Dakota business substantially owned or controlled in any way by the same interests that owned or controlled the former business?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
8. Will the previous business/account continue in business in North Dakota?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know		
9. If eligible, do you wish to continue the experience rating established by the acquired/previous business? <input type="checkbox"/> Yes <input type="checkbox"/> No If you do and are assigned your predecessor's tax rate, your new account will also be chargeable for any benefits payable to your predecessor's workers. If you do not answer this question and it is determined that you are a liable employer, you will receive the rate normally assigned to new employers; it will not include the predecessor's history.			

NDCC 52-04-08.2 provides for penalties in cases where the acquisition of a business is solely or primarily for the purpose of obtaining a lower unemployment insurance tax rate. Criminal and/or civil penalties apply.

Name of Owner/Officer		
Title	Telephone Number	Date

☐ I certify the information on SFN 41216, Schedule B, is true and accurate.

Go to the bottom of page 3 to submit the form.

Notice: Wage and other confidential information collected from employers as part of the unemployment insurance process may be requested and utilized for other governmental purposes, including, but not limited to, verification of eligibility under other government programs as required by law.

UNEMPLOYMENT COMPENSATION BENEFIT FINANCING OPTIONS FOR GOVERNMENTAL AND 501(c)(3) TAX EXEMPT EMPLOYERS AND INDIAN TRIBAL ENTITIES

UNEMPLOYMENT INSURANCE/TAX & FIELD SERVICES
JSND 4024 (R 9-15)

Option 1 - Contributing Method

The employer makes quarterly contributions to the unemployment compensation trust fund, the amount of which is determined by the employer's assigned tax rate and taxable employee wages. Initially, the employer is assigned a "new employer" tax rate. After two years, or three years if classified in the construction industry, the employer is assigned an experience-based rate. This is determined from the history of the taxes paid and benefits charged in relation to the employer's average annual taxable payroll.

On December 1 of each year, the rates for the following year are determined based on data accumulated through October 31. If the employer's cumulative benefit charges exceed the taxes paid, rates are assigned from the negative employer rate schedule. If the employer's cumulative taxes paid exceed the benefits charged, rates are assigned from the positive employer rate schedule. Within the negative and positive schedules, rates are assigned based on the employer's 6-year history of taxes and benefits charged in relation to the employer's average annual taxable payroll, which is 70 percent of the statewide average wage and changes annually.

Under this option, benefits are not charged to an employer's account for rate computation purposes if the employee left employment without good cause, was discharged for misconduct, or the employee received benefits which were later determined to be improperly paid.

Option 2 - Reimbursement Method

Under this method, the employer files quarterly wage reports but makes no tax payments. The employer receives a billing at the end of any calendar quarter in which benefits have been paid to any claimant which are attributable to wages paid by the employer.

Benefits are based on wages paid to a claimant during the first four of the five calendar quarters preceding the initial claim for benefits. Benefits paid during the one-year period following the initial claim are deemed attributable to employers who paid those base period wages. It is, therefore, possible that a claimant could receive benefits attributable to an employer they last worked for two and a half years previously.

Under this option, the employer may not be relieved of benefit charges paid after voluntary quit and discharge separations, or improperly paid benefits. The employer is responsible for reimbursing the fund the full cost of all benefits paid attributable to wages paid to its employees.

Option 3 - Advanced Reimbursement Method

This option is the same as Option 2 except the employer pays a fixed percentage of its total payroll each quarter to create a reserve from which the quarterly billings are paid. Initially, each quarter the employer pays 1 percent of its total payroll. Each year thereafter, the quarterly percentage is adjusted up or down to maintain a reserve balance equal to 1 percent of the previous year's total payroll.

Changing Options

An employer may change from one option to another at the beginning of any calendar year by filing a written notice with Job Service not later than 30 days prior to the beginning of the year.

An employer who changes from the contributing method (Option 1) to the reimbursing method (Option 2) may not change back to the contributing method for two years.

Employers who switch from the reimbursing method (Option 2 or 3) to the contributing method (Option 1) remain liable for reimbursements to the fund for benefits attributable to wages paid prior to the change.

Employers who change from Option 3 to Option 1 or Option 2 may have any accumulated reserves refunded to them. Reserves accumulated under Option 1 are not refundable.

For further information, check our Website or call 701-328-2814 or TTY: Relay ND 800-356-6886. You may also write to: Job Service North Dakota, Tax & Field Services, PO Box 5507, Bismarck, ND 58506-5507.

Nonprofit Organizations and North Dakota Taxes

Provided by North Dakota Office of State Tax Commissioner

The following pages will familiarize you with North Dakota's tax rules and responsibilities as they apply to nonprofit organizations. There are three general areas of taxation that nonprofits should be aware of: sales tax, income tax/withholding and property tax. If you have any questions about North Dakota taxes, please go to the Office of State Tax Commissioner's website at www.nd.gov/tax, or call 701-328-7088.

Sales Tax

There are two common questions the Office of State Tax Commissioner receives regarding how sales taxes may affect nonprofit organizations. The first is whether or not a nonprofit is required to *pay* sales taxes when purchasing items. The second is whether or not a nonprofit is required to *collect* sales taxes on items they sell.

Paying Sales Tax

Many people ask, "is my nonprofit organization required to pay sales taxes?" North Dakota law does not exempt purchases made by nonprofit organizations. Instead, the law details specific organizations that are exempt from sales and use tax. There are three general groups that are exempt from paying sales taxes.

Exempt non-profits are as follows:

- Government Units: Sales, rentals and/or leases of tangible personal property to the United States government, its departments and institutions, and political subdivisions are exempt from sales tax. Sales to Native American tribal governments for the purpose of providing essential government functions are also exempt. Contractors, performing a contract for the United States government, state government, its departments and institutions, or political subdivisions are NOT EXEMPT from payment of sales or use tax on materials and supplies used or consumed in carrying out such contracts. In these cases, the contractor is required to file returns and pay sales and use tax just as required for contracts with private parties.
- Schools: Public Schools are considered instrumentalities of state government and as such are entirely exempt from North Dakota sales and use tax on all purchases made by them. For sales to public schools to be exempt, the sales must be paid by a school district check or warrant. Nonprofit private or parochial schools are exempt from sales tax when purchasing items to be used exclusively in the operation of their school. These items include textbooks, yearbooks, school supplies and items purchased by the school for use in classrooms, gymnasiums, athletic fields and offices. It also includes items such as office supplies, school equipment, school supplies furnished but not sold to students, utility services, janitorial supplies, building maintenance supplies, and ground maintenance supplies associated with the operation of the school.
- Nursing Homes, Hospitals, Intermediate/Basic Care/ Facilities, Emergency Medical Service Providers and Voluntary Health Associations: Sales to nursing homes, hospitals, intermediate/basic care facilities and emergency medical service providers licensed by the North Dakota Health Department, and assisted living facilities licensed Human Services are exempt from sales tax. Sales to "voluntary health associations," which are recognized by the Internal Revenue Service, the National Health Council, the State Tax Commissioner, and the North Dakota Secretary of State as a nonprofit organization, are exempt from sales tax.

Here are some examples of organizations that are and are not required to pay sales tax:

NONTAXABLE	TAXABLE
<ul style="list-style-type: none"> • Federal, state and local government units • Native American tribal governments (excludes purchases to operate a business operation) • Schools (public and private) • Hospitals, nursing homes, intermediate/basic care facilities, and emergency medical service providers licensed by the Department of Health • Assisted Living facilities licensed by Human Services • Nonprofit voluntary health groups (recognized by the National Health Council) • State and local fairs • Nonprofit meal delivery groups, but only on items which pass to the final consumer of the meal, including containers, packages and wrapper 	<ul style="list-style-type: none"> • Churches and church groups • Service clubs • Social clubs • Veterans groups • Trusts • Recreation groups • Youth groups • Labor organizations • Fraternities and sororities • Professional associations • Private, for profit schools

If your group is exempt from North Dakota sales and use tax, contact the Office of State Tax Commissioner to obtain an “Exemption Certificate.” You should present it when a retail purchase is made and it will exempt the purchase from sales tax. Only groups possessing this certificate may buy goods without the imposition of sales or use tax. In the absence of this certificate, the retailer is obligated to charge sales tax. Exemption certificates are available upon application to the Office of State Tax Commissioner.

Collecting Sales Tax

The second question is whether a nonprofit must collect sales tax when conducting an activity that would otherwise be taxable. According to North Dakota law, certain activities are exempted from collecting sales tax. Exempt activities are as follows:

- The gross receipts from sales of tickets, or admissions to state, county, district and local fairs.
- All gross receipts from educational, religious or charitable activities, unless the activity is held in a publicly owned facility. If held in a publicly owned facility, the first \$10,000 of gross receipts from activities at each individual event are exempt. If the gross receipts from activities at a single event held in a publicly owned facility are greater than \$10,000, the gross receipts from that event in excess of \$10,000 are subject to sales tax. To be exempt, the entire amount of net receipts must be expended for educational, religious or charitable purposes.
- The gross receipts derived by any public school district if the receipts are accounted for in accordance with North Dakota Century Code (N.D.C.C.) Section 15.1-07.

Rules and Exemptions

The law states that these exemptions from collecting sales tax do not apply to regular retail sales that are in direct competition with retailers. “Regular retail sales” include all recurring, regularly scheduled, or ongoing retail sales made in the ordinary course of business other than those made on an isolated or occasional basis. “Direct competition” means activity wholly or substantially similar to existing sales, taxable goods, or services competing for the same customer market.

The exemption for sales by public schools and associated school groups only applies when the receipts are accounted for as required by N.D.C.C. Section 15.1-07-10, which requires the receipts from school related extracurricular activities be deposited in an activities fund.

The school district business manager is required to submit to the school board a monthly report of receipts, expenditures and balances in the fund. Extracurricular sales income not deposited and accounted for within the school activities fund is subject to sales tax, as is all sales activity which occurs outside the school in other publicly owned facilities.

Under these provisions, nonprofit groups which operate ongoing businesses in direct competition with other retailers, such as thrift store owners or restaurants, must always collect and remit sales tax regardless of the use of the net sales receipt. In addition, groups which operate on a more limited basis at craft shows, street fairs, county fairs, etc. are also subject to sales tax on sales in excess of \$10,000 at a single event if the event occurs in publicly owned facilities such as civic centers, public schools, government fairgrounds, state capitol grounds, etc.

Pursuant to N.D.C.C. Section 57-39.2-04(40), an exemption is provided for the gross receipts from sales of tickets or admissions to sales made at an annual church supper or bazaar held in a publicly owned facility. For purposes of this subsection, annual means occurring not more than once in any calendar year.

What to Do if Required to Collect Sales Tax

Organizations that make retail sales subject to tax must hold a North Dakota sales and use tax permit and collect and remit applicable tax on a regular basis. An application for a sales and use tax permit is available online at www.nd.gov/tax/tap, or by contacting the Office of State Tax Commissioner.

Income Tax/Withholding

There are two issues concerning income taxes and the nonprofit organization. The first addresses whether the organization itself must file an income tax return. The second is a nonprofit organization's income tax withholding responsibilities, should that organization have any employees.

Income Tax

As an entity, if a nonprofit organization is exempt from income tax for federal purposes, then it is exempt for state purposes. Nothing would need to be filed with the Office of State Tax Commissioner. In some instances, a nonprofit organization may have a portion of its income taxable at the federal level. If this occurs, a North Dakota Corporation Income Tax Return (Form 40), would then need to be filed. The form can be obtained from the Tax Commissioner's website at www.nd.gov/tax/corp/forms, or by contacting the Office of State Tax Commissioner.

Withholding

A nonprofit organization has the same income tax withholding requirements as any other employer in North Dakota. An employer is required to withhold North Dakota income tax from wages paid to an employee if the employee performs services within North Dakota and the employer is required to withhold Federal income tax from the wages.

If income tax withholding applies to your nonprofit organization, please register online at www.nd.gov/tax/tap. Guidelines with detailed information regarding income tax withholding are available online at www.nd.gov/tax/withholding/pubs.

Property Tax

A nonprofit organization is not, in itself, exempt from paying property taxes. Instead, the State Constitution has provided that "...property used exclusively for schools, religious, cemetery, charitable, or other public purposes shall be exempt from taxation." Interpretations by the courts and the legislature have further defined how this is to be applied.

The legislature has consistently exempted both buildings and land owned by charitable organizations. However, exemptions provided for other entities generally apply only to buildings and structures, with the land upon which the structures are located remaining subject to taxation. (Separate exemptions are provided for both the buildings and lands used exclusively for public worship and the land and dwellings belonging to a religious organization for the residence of the bishop, priest, pastor, etc.)

The property must pass a two-step process to be eligible for exemption. First, the property must be owned by the institution of public charity. Second, the property on which the exemption is claimed must be devoted to, and actually used to carry out the charitable purposes of the organization.

The following are examples of property that may qualify for some form of property tax exemption:

- Property owned by lodges not organized for profit.
- Property owned by not-for-profit nursing homes and hospitals.
- Property owned by nonprofit historical societies operated for the public.
- Property owned by a senior citizens' club.

In order to be eligible for the property tax exemption, the organization must apply annually. Application is made through the local assessing official, who makes the initial exemption determination. Exemption applications and answers to questions can be obtained from your local assessor, or from the Office of State Tax Commissioner.

Risk and Insurance

Provided by the North Dakota Insurance Department

Risk is generally defined as the chance of loss. Managing risk requires the active identification, evaluation, and management of all of the potential hazards and exposures to loss a business (profit or nonprofit) may experience. Insurance is just one tool or method used to manage risk. For the cost of a premium the business can transfer risk that it does not want to an insurance company.

The following list identifies some general areas of risk exposure and the type of insurance policy that can be used to address that type of risk. The purpose is to provide you with a general summary. There is no attempt to provide an all inclusive list, or to discuss all possible risk exposures you might face, as it is not within the scope of this article. Please consider this just a start in your evaluation process.

It is recommended that you consult with an insurance agent and an attorney for assistance in evaluation of your risk exposure and for advice on whether or not insurance is appropriate for your risk profile.

Liability

Commercial General Liability (CGL) - Premise/operations coverage, products/completed operations liability, contractual liability, contingent liability, for bodily injury and property damage claims and personal and advertising injury claims. Policy pays medical expenses, cost of defending the lawsuit, bond during legal proceedings, and judgments.

- Medical Payments - Med Pay is included in the CGL. and provides payment for medical expenses for a minor injury to a third party regardless of negligence. Special events - Special events liability for events sponsored by the business whether on premises or off premises such as summer camps, fund raisers, fireworks display or other unique events may be endorsed to the CGL. Some events may have to be covered by a liability policy tailored for that type of risk.

Directors and Officers Liability - Coverage for the company's board of directors and officers for claims from stockholders, employees and clients for managerial decision that have adverse financial consequences..

Employee Benefit Liability - Coverage for the company for claims resulting from the mishandling or misapplication of employee benefits. This includes management of health, disability and retirement funds.

Employer's Liability – Coverage for the company for claims resulting from a work-related injury that is not covered by Workers Compensation. Generally this coverage is written as an endorsement to the Commercial General Liability policy.

Employment Practices Liability - Coverage for the company and directors and officers for the cost of lawsuits brought by an employee, former employees, and potential employees. Alleged discrimination, wrongful termination of employment, sexual harassment, and breach of employment contract are covered. May also cover failure to hire or promote, , wrongful discipline, wrongful infliction of emotional distress, and loss of career opportunity. This coverage is specifically excluded in the general liability and workers compensation policies.

Excess/Umbrella Liability - A higher limit of liability coverage that sits on top of underlying primary policies such as the CGL, Commercial Auto, Directors and Officers, BOP, Homeowners and Personal Auto, etc. providing expanded amounts of coverage. An excess policy provides no broader coverage then the underlying policies, while an umbrella provides some coverages the underlying policies may not.

Professional (Errors and Omissions) Liability - Coverage for the costs of a liability lawsuit resulting from incompetence, errors, omissions, or negligence in the performance of professional services.. Examples of professions that are written include the following: beauticians, barbers, architects, engineers, physicians, dentists, nurses, accountants, stockbrokers, realtors, insurance agents, financial advisors, healthcare providers, and teachers.

Property

Commercial Property - Coverage for a company's buildings, business personal property, and personal property of others. Coverage can be on a named peril basis (basic or broad form causes of loss) or on an all perils (special causes of loss) basis. The following coverages if not included in the commercial property policy may be available as an optional add-on coverage to the policy:

- **Business Income** - Coverage for loss of income a company can incur following loss or damage to the property.
- **Extra Expense** – Coverage that pays for additional costs in excess of normal operating expenses that an organization incurs to continue operations while its property is being repaired or replaced after having been damaged by a covered cause of loss.
- **Crime** - A variety of crime coverages exist including:
 - Burglary and robbery on and off premises
 - Money and securities
 - Employee dishonesty
 - Forgery
 - Kidnapping and extortion.
 - Computer fraud and social engineering fraud
- **Equipment Breakdown** - Coverage for a company for the cost of repairing or replacing a broad range of equipment, technology and machinery necessary to business operations. It covers such things as power surges, short circuits, centrifugal force, mechanical breakdown, boiler overheating or cracking, and loss of income and extra expense to maintain normal operations.
- **Inland Marine** - Coverage for property items that are not permanently attached to the building. This includes a broad range of items including stock and merchandise, displays, fine arts and other items frequently used and moved off premises. It normally provides all perils coverage to covered property regardless of where it is located.

Earthquake - Coverage for damage to property caused by earthquake. The Commercial Property policy excludes earthquake coverage. Coverage may be endorsed to the Commercial Property policy or issued as a stand-alone policy.

Flood - Coverage for damage to property caused by the peril of flood. Property policies do not cover damage caused by flood. However, some companies have added limited flood coverage to commercial property policies for large accounts. The primary source for flood insurance is the National Flood Insurance Program (NFIP) which is a federal insurance program. Property and casualty insurance agents can write directly with the federal program, or agents with companies who have partnered with NFIP under the Write Your Own (WYO) program can also issue policies on behalf of the federal program.

Other

Commercial Auto - Coverage for the liability (liability, PIP (personal injury protection), uninsured and underinsured motorist) associated with the operation, use and maintenance of a business vehicle as well as coverage for physical damage to the vehicle. Coverage is available for hired and borrowed (non-owned) autos used in the business.

Workers Compensation - Coverage for injuries that a worker incurs while on the job. Coverage includes medical services, disability, retraining, and wages. In North Dakota Workers Compensation coverage is provided by Workforce Safety and Insurance. The Workforce Safety and Insurance website is located at <http://www.workforcesafety.com> or you may call them at 1-800-777-5033.

North Dakota Department of Labor and Human Rights Nonprofit Fact Sheet

Who is a volunteer?

Workers are volunteers if they meet one or more of the definitions below:

- Individuals who donate their time and services, usually on a part-time basis, including public service, humanitarian objectives, religious, fraternal, nonprofit, and charitable organizations, not as employees and without contemplation of pay.
- Individuals who provide services to hospitals or nursing homes to provide support and assistance to families and patients.
- Regular employees of religious, nonprofit, or charitable organizations may volunteer their services for activities outside of their normal work duties.
- Residents or patients of shelters, foster care, or other such related establishments may volunteer their services as long as regular employees are not displaced.

Reference: North Dakota Administrative Code 46-02-07-02

What if a worker does not meet one or more of the definitions above?

A worker who does not meet one or more of the definitions above would need to be treated as an employee as opposed to a volunteer. For purposes of the ND Department of Labor and Human Rights' jurisdiction, this means that the worker would be covered by all state labor and human rights (anti-discrimination) laws. These laws would indicate that, among other things, the employee is entitled to be paid at least the minimum wage, receive meal breaks, receive overtime compensation if not exempt, and not be subjected to unlawful employment discrimination. Additionally, in some circumstances, a volunteer may also be protected from unlawful discrimination under human rights laws.

What if I have questions about the status of a specific work relationship?

For more information regarding volunteer status or labor and human rights laws, contact the ND Department of Labor and Human Rights at (701) 328-2660, in-state toll-free at 1-800-582-8032, or via e-mail at labor@nd.gov. You may visit our website at www.nd.gov/labor.